

HOUSE SUBSTITUTE  
FOR  
SENATE BILL NO. 932

AN ACT

To repeal sections 285.300, 288.030, 288.032,  
288.034, 288.036, 288.038, 288.040, 288.050,  
288.060, 288.070, 288.090, 288.110, 288.120,  
288.121, 288.122, 288.128, 288.190, 288.290,  
288.310, 288.330, 288.380, 288.381, 288.382,  
and 288.500, RSMo, and to enact in lieu  
thereof thirty-one new sections relating to  
employees, with penalty provisions and an  
emergency clause.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

Section A. Sections 285.300, 288.030, 288.032, 288.034,  
288.036, 288.038, 288.040, 288.050, 288.060, 288.070, 288.090,  
288.110, 288.120, 288.121, 288.122, 288.128, 288.190, 288.290,  
288.310, 288.330, 288.380, 288.381, 288.382, and 288.500, RSMo,  
are repealed and thirty-one new sections enacted in lieu thereof,  
to be known as sections 285.300, 288.030, 288.032, 288.034,  
288.036, 288.038, 288.040, 288.045, 288.050, 288.060, 288.070,  
288.090, 288.110, 288.120, 288.121, 288.122, 288.128, 288.175,  
288.190, 288.290, 288.310, 288.330, 288.380, 288.381, 288.382,  
288.395, 288.397, 288.398, 288.500, 288.501, and 288.502, to read  
as follows:

285.300. 1. Every employer doing business in the state  
shall require each newly hired employee to fill out a federal W-4

1 withholding form. A copy of each withholding form or an  
2 equivalent form containing data required by section 285.304 which  
3 may be provided in an electronic or magnetic format, shall be  
4 sent to the department of revenue by the employer within twenty  
5 days after the date the employer hires the employee or in the  
6 case of an employer transmitting a report magnetically or  
7 electronically, by two monthly transmissions, if necessary, not  
8 less than twelve days nor more than sixteen days apart. For  
9 purposes of this section, the date the employer hires the  
10 employee shall be the earlier of the date the employee signs the  
11 W-4 form or its equivalent, or the first date the employee  
12 reports to work, or performs labor or services. Such forms shall  
13 be forwarded by the department of revenue to the division of  
14 child support enforcement on a weekly basis and the information  
15 shall be entered into the database, to be known as the "State  
16 Directory of New Hires". The information reported shall be  
17 provided to the National Directory of New Hires established in 42  
18 U.S.C. section 653, other state agencies or contractors of the  
19 division as required or allowed by federal statutes or  
20 regulations. The division of employment security shall cross-  
21 check Missouri unemployment compensation recipients against any  
22 federal new hire database or any other database containing  
23 Missouri or other states' wage information which is maintained by  
24 the federal government on a weekly basis. The division of  
25 employment security shall cross-check unemployment compensation

1 applicants and recipients with Social Security Administration  
2 data maintained by the federal government on the most frequent  
3 basis recommended by the United States Department of Labor, or  
4 absent a recommendation, at least monthly. Effective January 1,  
5 2007, the division of employment security shall cross-check at  
6 least monthly unemployment compensation applicants and recipients  
7 with department of revenue drivers license databases.

8         2. Any employer that has employees who are employed in two  
9 or more states and transmits reports magnetically or  
10 electronically may comply with subsection 1 of this section by:

11             (1) Designating one of the states in which the employer has  
12 employees as the designated state that such employer shall  
13 transmit the reports; and

14             (2) Notifying the secretary of Health and Human Services of  
15 such designation.

16         288.030. 1. As used in this chapter, unless the context  
17 clearly requires otherwise, the following terms mean:

18             (1) "Appeals tribunal" means a referee or a body consisting  
19 of three referees appointed to conduct hearings and make  
20 decisions on appeals from administrative determinations,  
21 petitions for reassessment, and claims referred pursuant to  
22 subsection 2 of section 288.070;

23             (2) "Base period" [means], the first four of the last five  
24 completed calendar quarters immediately preceding the first day  
25 of an individual's benefit year;

1           (3) "Benefit year" [means]\_ the one-year period beginning  
2 with the first day of the first week with respect to which an  
3 insured worker first files an initial claim for determination of  
4 such worker's insured status, and thereafter the one-year period  
5 beginning with the first day of the first week with respect to  
6 which the individual, providing the individual is then an insured  
7 worker, next files such an initial claim after the end of the  
8 individual's last preceding benefit year;

9           (4) "Benefits" [means]\_ the money payments payable to an  
10 insured worker, as provided in this chapter, with respect to such  
11 insured worker's unemployment;

12           (5) "Calendar quarter" [means]\_ the period of three  
13 consecutive calendar months ending on March thirty-first, June  
14 thirtieth, September thirtieth, or December thirty-first;

15           (6) "Claimant" [means]\_ an individual who has filed an  
16 initial claim for determination of such individual's status as an  
17 insured worker, a notice of unemployment, a certification for  
18 waiting week credit, or a claim for benefits;

19           (7) "Commission" [means]\_ the labor and industrial  
20 relations commission of Missouri;

21           (8) "Common paymaster" [means]\_ two or more related  
22 corporations in which one of the corporations has been designated  
23 to disburse remuneration to concurrently employed individuals of  
24 any of the related corporations;

25           (9) "Contributions" [means]\_ the money payments to the

1 unemployment compensation fund required by this chapter,  
2 exclusive of interest and penalties;

3 (10) "Decision" [means]\_ a ruling made by an appeals  
4 tribunal or the commission after a hearing;

5 (11) "Deputy" [means]\_ a representative of the division  
6 designated to make investigations and administrative  
7 determinations on claims or matters of employer liability or to  
8 perform related work;

9 (12) "Determination" [means]\_ any administrative ruling  
10 made by the division without a hearing;

11 (13) "Director" [means]\_ the administrative head of the  
12 division of employment security;

13 (14) "Division" [means]\_ the division of employment  
14 security which administers this chapter;

15 (15) "Employing unit" [means]\_ any individual,  
16 organization, partnership, corporation, common paymaster, or  
17 other legal entity, including the legal representatives thereof,  
18 which has or, subsequent to June 17, 1937, had in its employ one  
19 or more individuals performing services for it within this state.  
20 All individuals performing services within this state for any  
21 employing unit which maintains two or more separate  
22 establishments within this state shall be deemed to be employed  
23 by a single employing unit for all the purposes of this chapter.  
24 Each individual engaged to perform or to assist in performing the  
25 work of any person in the service of an employing unit shall be

1 deemed to be engaged by such employing unit for all the purposes  
2 of this chapter, whether such individual was engaged or paid  
3 directly by such employing unit or by such person, provided the  
4 employing unit had actual or constructive knowledge of the work;

5 (16) "Employment office" [means]\_ a free public employment  
6 office operated by this or any other state as a part of a state  
7 controlled system of public employment offices including any  
8 location designated by the state as being a part of the one-stop  
9 career system;

10 (17) "Equipment" [means]\_ a motor vehicle, straight truck,  
11 tractor, semi-trailer, full trailer, any combination of these and  
12 any other type of equipment used by authorized carriers in the  
13 transportation of property for hire;

14 (18) "Fund" [means]\_ the unemployment compensation fund  
15 established by this chapter;

16 (19) "Governmental entity" [means]\_ the state, any  
17 political subdivision thereof, any instrumentality of any one or  
18 more of the foregoing which is wholly owned by this state and one  
19 or more other states or political subdivisions and any  
20 instrumentality of this state or any political subdivision  
21 thereof and one or more other states or political subdivisions;

22 (20) "Initial claim" [means]\_ an application, in a form  
23 prescribed by the division, made by an individual for the  
24 determination of the individual's status as an insured worker;

25 (21) "Insured work" [means]\_ employment in the service of

1 an employer;

2 (22) (a) As to initial claims filed after December 31,  
3 1990, "insured worker" [means], a worker who has been paid wages  
4 for insured work in the amount of one thousand dollars or more in  
5 at least one calendar quarter of such worker's base period and  
6 total wages in the worker's base period equal to at least one and  
7 one-half times the insured wages in that calendar quarter of the  
8 base period in which the worker's insured wages were the highest,  
9 or in the alternative, a worker who has been paid wages in at  
10 least two calendar quarters of such worker's base period and  
11 whose total base period wages are at least one and one-half times  
12 the maximum taxable wage base, taxable to any one employer, in  
13 accordance with [subdivision (1)] subsection 2 of section  
14 288.036. For the purposes of this definition, "wages" shall be  
15 considered as wage credits with respect to any benefit year, only  
16 if such benefit year begins subsequent to the date on which the  
17 employing unit by which such wages were paid has become an  
18 employer;

19 (b) As to initial claims filed after December 31, 2004,  
20 wages for insured work in the amount of one thousand five hundred  
21 dollars or more in at least one calendar quarter of such worker's  
22 base period and total wages in the worker's base period equal to  
23 at least one and one-half times the insured wages in that  
24 calendar quarter of the base period in which the worker's insured  
25 wages were the highest, or in the alternative, a worker who has

1 been paid wages in at least two calendar quarters of such  
2 worker's base period and whose total base period wages are at  
3 least one and one-half times the maximum taxable wage base,  
4 taxable to any one employer, in accordance with [subdivision (1)]  
5 subsection 2 of section 288.036;

6 (23) "Lessor", in a lease, [means], the party granting the  
7 use of equipment, with or without a driver to another;

8 (24) "Misconduct", an act of wanton or willful disregard of  
9 the employer's interest, a deliberate violation of the employer's  
10 rules, a disregard of standards of behavior which the employer  
11 has the right to expect of his or her employee, or negligence in  
12 such degree or recurrence as to manifest culpability, wrongful  
13 intent or evil design, or show an intentional and substantial  
14 disregard of the employer's interest or of the employee's duties  
15 and obligations to the employer;

16 (25) "Referee" [means], a representative of the division  
17 designated to serve on an appeals tribunal;

18 [(25)] (26) "State", includes, in addition to the states of  
19 the United States of America, the District of Columbia, Puerto  
20 Rico, the Virgin Islands, and the Dominion of Canada;

21 [(26)] (27) "Temporary help firm", a firm that hires its  
22 own employees and assigns them to clients to support or  
23 supplement the clients' workforce in work situations such as  
24 employee absences, temporary skill shortages, seasonal workloads,  
25 and special assignments and projects;



1           (28) "Temporary employee", an employee assigned to work for  
2 the clients of a temporary help firm;

3           (29) (a) An individual shall be deemed "totally  
4 unemployed" in any week during which the individual performs no  
5 services and with respect to which no wages are payable to such  
6 individual;

7           (b) An individual shall be deemed "partially unemployed" in  
8 any week of less than full-time work if the wages payable to such  
9 individual for such week do not equal or exceed the individual's  
10 weekly benefit amount plus twenty dollars;

11           (c) An individual's "week of unemployment" shall begin the  
12 first day of the calendar week in which the individual registers  
13 at an employment office except that, if for good cause the  
14 individual's registration is delayed, the week of unemployment  
15 shall begin the first day of the calendar week in which the  
16 individual would have otherwise registered. The requirement of  
17 registration may by regulation be postponed or eliminated in  
18 respect to claims for partial unemployment or may by regulation  
19 be postponed in case of a mass layoff due to a temporary  
20 cessation of work;

21           [(27)] (30) "Waiting week" [means], the first week of  
22 unemployment for which a claim is allowed in a benefit year or if  
23 no waiting week has occurred in a benefit year in effect on the  
24 effective date of a shared work plan, the first week of  
25 participation in a shared work unemployment compensation program

1       pursuant to section 288.500.

2               2. The Missouri average annual wage shall be computed as of  
3       June thirtieth of each year, and shall be applicable to the  
4       following calendar year. The Missouri average annual wage shall  
5       be calculated by dividing the total wages reported as paid for  
6       insured work in the preceding calendar year by the average of  
7       mid-month employment reported by employers for the same calendar  
8       year. The Missouri average weekly wage shall be computed by  
9       dividing the Missouri average annual wage as computed in this  
10      subsection by fifty-two.

11           288.032. 1. After December 31, 1977, "employer" means:

12           (1) Any employing unit which in any calendar quarter in  
13      either the current or preceding calendar year paid for service in  
14      employment wages of one thousand five hundred dollars or more  
15      except that for the purposes of this definition, wages paid for  
16      "agricultural labor" as defined in paragraph (a) of subdivision  
17      (1) of subsection 12 of section 288.034 and for "domestic  
18      services" as defined in subdivisions (2) and ~~[(12)]~~ (13) of  
19      subsection 12 of section 288.034 shall not be considered;

20           (2) Any employing unit which for some portion of a day in  
21      each of twenty different calendar weeks, whether or not such  
22      weeks were consecutive, in either the current or the preceding  
23      calendar year, had in employment at least one individual  
24      (irrespective of whether the same individual was in employment in  
25      each such day); except that for the purposes of this definition,

1 services performed in "agricultural labor" as defined in  
2 paragraph (a) of subdivision (1) of subsection 12 of section  
3 288.034 and in "domestic services" as defined in subdivisions (2)  
4 and ~~[(12)]~~ (13) of subsection 12 of section 288.034 shall not be  
5 considered;

6 (3) Any governmental entity for which service in employment  
7 as defined in subsection 7 of section 288.034 is performed;

8 (4) Any employing unit for which service in employment as  
9 defined in subsection 8 of section 288.034 is performed during  
10 the current or preceding calendar year;

11 (5) Any employing unit for which service in employment as  
12 defined in paragraph (b) of subdivision (1) of subsection 12 of  
13 section 288.034 is performed during the current or preceding  
14 calendar year;

15 (6) Any employing unit for which service in employment as  
16 defined in subsection 13 of section 288.034 is performed during  
17 the current or preceding calendar year;

18 (7) Any individual, type of organization or employing unit  
19 which has been determined to be a successor pursuant to section  
20 288.110;

21 (8) Any individual, type of organization or employing unit  
22 which has elected to become subject to this law pursuant to  
23 subdivision (1) of subsection 3 of section 288.080;

24 (9) Any individual, type of organization or employing unit  
25 which, having become an employer, has not pursuant to section

1       288.080 ceased to be an employer;

2               (10) Any employing unit subject to the Federal Unemployment  
3 Tax Act or which, as a condition for approval of this law for  
4 full tax credit against the tax imposed by the Federal  
5 Unemployment Tax Act, is required, pursuant to such act, to be an  
6 employer pursuant to this law.

7               2. (1) Notwithstanding any other provisions of this law,  
8 any employer, individual, organization, partnership, corporation,  
9 other legal entity or employing unit that meets the definition of  
10 "lessor employing unit", as defined in subdivision (5) of this  
11 subsection, shall be liable for contributions on wages paid by  
12 the lessor employing unit to individuals performing services for  
13 client lessees of the lessor employing unit. Unless the lessor  
14 employing unit has timely complied with the provisions of  
15 subdivision (3) of this subsection, any employer, individual,  
16 organization, partnership, corporation, other legal entity or  
17 employing unit which is leasing individuals from any lessor  
18 employing unit shall be jointly and severally liable for any  
19 unpaid contributions, interest and penalties due pursuant to this  
20 law from any lessor employing unit attributable to wages for  
21 services performed for the client lessee entity by individuals  
22 leased to the client lessee entity, and the lessor employing unit  
23 shall keep separate records and submit separate quarterly  
24 contribution and wage reports for each of its client lessee  
25 entities. Delinquent contributions, interest and penalties shall

1 be collected in accordance with the provisions of this chapter.

2 (2) Notwithstanding the provisions of subdivision (1) of  
3 this subsection, any governmental entity or nonprofit  
4 organization that meets the definition of "lessor employing  
5 unit", as defined in subdivision (5) of this subsection, and has  
6 elected to become liable for payments in lieu of contributions as  
7 provided in subsection 3 of section 288.090, shall pay the  
8 division payments in lieu of contributions, interest, penalties  
9 and surcharges in accordance with section 288.090 on benefits  
10 paid to individuals performing services for the client lessees of  
11 the lessor employing unit. If the lessor employing unit has not  
12 timely complied with the provisions of subdivision (3) of this  
13 subsection, any client lessees with services attributable to and  
14 performed for the client lessees shall be jointly and severally  
15 liable for any unpaid payments in lieu of contributions,  
16 interest, penalties and surcharges due pursuant to this law. The  
17 lessor employing unit shall keep separate records and submit  
18 separate quarterly contribution and wage reports for each of its  
19 client lessees. Delinquent payments in lieu of contributions,  
20 interest, penalties and surcharges shall be collected in  
21 accordance with subsection 3 of section 288.090. The election to  
22 be liable for payments in lieu of contributions made by a  
23 governmental entity or nonprofit organization meeting the  
24 definition of "lessor employing unit", may be terminated by the  
25 division in accordance with subsection 3 of section 288.090.

1           (3) In order to relieve a client lessees from joint and  
2 several liability and the separate reporting requirements imposed  
3 pursuant to this subsection, any lessor employing unit may post  
4 and maintain a surety bond issued by a corporate surety  
5 authorized to do business in Missouri in an amount equivalent to  
6 the contributions or payments in lieu of contributions for which  
7 the lessor employing unit was liable in the last calendar year in  
8 which he or she accrued contributions or payments in lieu of  
9 contributions, or one hundred thousand dollars, whichever amount  
10 is the greater, to ensure prompt payment of contributions or  
11 payments in lieu of contributions, interest, penalties and  
12 surcharges for which the lessor employing unit may be, or  
13 becomes, liable pursuant to this law. In lieu of a surety bond,  
14 the lessor employing unit may deposit in a depository designated  
15 by the director, securities with marketable value equivalent to  
16 the amount required for a surety bond. The securities so  
17 deposited shall include authorization to the director to sell any  
18 securities in an amount sufficient to pay any contributions or  
19 payments in lieu of contributions, interest, penalties and  
20 surcharges which the lessor employing unit fails to promptly pay  
21 when due. In lieu of a surety bond or securities as described in  
22 this subdivision, any lessor employing unit may provide the  
23 director with an irrevocable letter of credit, as defined in  
24 section 400.5-103, RSMo, issued by any state or federally  
25 chartered financial institution, in an amount equivalent to the

1 amount required for a surety bond as described in this  
2 subdivision. In lieu of a surety bond, securities or an  
3 irrevocable letter of credit, a lessor employing unit may obtain  
4 a certificate of deposit issued by any state or federally  
5 chartered financial institution, in an amount equivalent to the  
6 amount required for a surety bond as described in this  
7 subdivision. The certificate of deposit shall be pledged to the  
8 director until release by the director. As used in this  
9 subdivision, the term "certificate of deposit" means a  
10 certificate representing any deposit of funds in a state or  
11 federally chartered financial institution for a specified period  
12 of time which earns interest at a fixed or variable rate, where  
13 such funds cannot be withdrawn prior to a specified time without  
14 forfeiture of some or all of the earned interest.

15 (4) Any lessor employing unit which is currently engaged in  
16 the business of leasing individuals to client lessees shall  
17 comply with the provisions of subdivision (3) of this subsection  
18 by September 28, 1992. Lessor employing units not currently  
19 engaged in the business of leasing individuals to client lessees  
20 shall comply with subdivision (3) of this subsection before  
21 entering into a written lease agreement with client lessees.

22 (5) As used in this subsection, the term "lessor employing  
23 unit" means an independently established business entity,  
24 governmental entity as defined in subsection 1 of section 288.030  
25 or nonprofit organization as defined in subsection 3 of section

1       288.090 which, pursuant to a written lease agreement between the  
2       lessor employing unit and the client lessees, engages in the  
3       business of providing individuals to any other employer,  
4       individual, organization, partnership, corporation, other legal  
5       entity or employing unit referred to in this subsection as a  
6       client lessee.

7           (6) The provisions of this subsection shall not be  
8       applicable to private employment agencies who provide their  
9       employees to employers on a temporary help basis provided the  
10      private employment agencies are liable as employers for the  
11      payment of contributions on wages paid to temporary workers so  
12      employed.

13          3. After September 30, 1986, notwithstanding any provision  
14      of section 288.034, for the purpose of this law, in no event  
15      shall a for-hire motor carrier as regulated by the Missouri  
16      division of motor carrier and railroad safety or whose operations  
17      are confined to a commercial zone be determined to be the  
18      employer of a lessor as defined in section 288.030 or of a driver  
19      receiving remuneration from a lessor, provided, however, the term  
20      "for-hire motor carrier" shall in no event include an  
21      organization described in section 501(c)(3) of the Internal  
22      Revenue Code or any governmental entity.

23          4. The owner or operator of a beauty salon or similar  
24      establishment shall not be determined to be the employer of a  
25      person who utilizes the facilities of the owner or operator but



1 who receives neither salary, wages or other compensation from the  
2 owner or operator and who pays the owner or operator rent or  
3 other payments for the use of the facilities.

4 288.034. 1. "Employment" means service, including service  
5 in interstate commerce, performed for wages or under any contract  
6 of hire, written or oral, express or implied, and notwithstanding  
7 any other provisions of this section, service with respect to  
8 which a tax is required to be paid under any federal unemployment  
9 tax law imposing a tax against which credit may be taken for  
10 contributions required to be paid into a state unemployment fund  
11 or which, as a condition for full tax credit against the tax  
12 imposed by the Federal Unemployment Tax Act, is required to be  
13 covered under this law.

14 2. The term "employment" shall include an individual's  
15 entire service, performed within or both within and without this  
16 state if:

17 (1) The service is localized in this state; or

18 (2) The service is not localized in any state but some of  
19 the service is performed in this state and the base of  
20 operations, or, if there is no base of operations, then the place  
21 from which such service is directed or controlled, is in this  
22 state; or the base of operations or place from which such service  
23 is directed or controlled is not in any state in which some part  
24 of the service is performed but the individual's residence is in  
25 this state.

1           3. Service performed by an individual for wages shall be  
2 deemed to be employment subject to this law:

3           (1) If covered by an election filed and approved pursuant  
4 to subdivision (2) of subsection 3 of section 288.080;

5           (2) If covered by an arrangement pursuant to section  
6 288.340 between the division and the agency charged with the  
7 administration of any other state or federal unemployment  
8 insurance law, pursuant to which all services performed by an  
9 individual for an employing unit are deemed to be performed  
10 entirely within this state.

11          4. Service shall be deemed to be localized within a state  
12 if the service is performed entirely within such state; or the  
13 service is performed both within and without such state, but the  
14 service performed without such state is incidental to the  
15 individual's service within the state; for example, is temporary  
16 or transitory in nature or consists of isolated transactions.

17          5. Service performed by an individual for remuneration  
18 shall be deemed to be employment subject to this law unless it is  
19 shown to the satisfaction of the division that such services were  
20 performed by an independent contractor. In determining the  
21 existence of the independent contractor relationship, the common  
22 law of agency right to control shall be applied. The common law  
23 of agency right to control test shall include but not be limited  
24 to: if the alleged employer retains the right to control the  
25 manner and means by which the results are to be accomplished, the

1 individual who performs the service is an employee. If only the  
2 results are controlled, the individual performing the service is  
3 an independent contractor.

4 6. The term "employment" shall include service performed  
5 for wages as an agent-driver or commission-driver engaged in  
6 distributing meat products, vegetable products, fruit products,  
7 bakery products, beverages (other than milk), or laundry or  
8 dry-cleaning services, for his or her principal; or as a  
9 traveling or city salesman, other than as an agent-driver or  
10 commission-driver, engaged upon a full-time basis in the  
11 solicitation on behalf of, and the transmission to, his or her  
12 principal (except for sideline sales activities on behalf of some  
13 other person) of orders from wholesalers, retailers, contractors,  
14 or operators of hotels, restaurants, or other similar  
15 establishments for merchandise for resale or supplies for use in  
16 their business operations, provided:

17 (1) The contract of service contemplates that substantially  
18 all of the services are to be performed personally by such  
19 individual; and

20 (2) The individual does not have a substantial investment  
21 in facilities used in connection with the performance of the  
22 services (other than in facilities for transportation); and

23 (3) The services are not in the nature of a single  
24 transaction that is not part of a continuing relationship with  
25 the person for whom the services are performed.

1           7. Service performed by an individual in the employ of this  
2 state or any political subdivision thereof or any instrumentality  
3 of any one or more of the foregoing which is wholly owned by this  
4 state and one or more other states or political subdivisions, or  
5 any service performed in the employ of any instrumentality of  
6 this state or of any political subdivision thereof, and one or  
7 more other states or political subdivisions, provided that such  
8 service is excluded from "employment" as defined in the Federal  
9 Unemployment Tax Act by Section 3306(c)(7) of that act and is not  
10 excluded from "employment" pursuant to subsection 9 of this  
11 section, shall be "employment" subject to this law.

12           8. Service performed by an individual in the employ of a  
13 corporation or any community chest, fund, or foundation organized  
14 and operated exclusively for religious, charitable, scientific,  
15 testing for public safety, literary, or educational purposes, or  
16 for the prevention of cruelty to children or animals, no part of  
17 the net earnings of which inures to the benefit of any private  
18 shareholder or individual, or other organization described in  
19 Section 501(c)(3) of the Internal Revenue Code which is exempt  
20 from income tax under Section 501(a) of that code if the  
21 organization had four or more individuals in employment for some  
22 portion of a day in each of twenty different weeks whether or not  
23 such weeks were consecutive within a calendar year regardless of  
24 whether they were employed at the same moment of time shall be  
25 "employment" subject to this law.

1           9. For the purposes of subsections 7 and 8 of this section,  
2 the term "employment" does not apply to service performed:

3           (1) In the employ of a church or convention or association  
4 of churches, or an organization which is operated primarily for  
5 religious purposes and which is operated, supervised, controlled,  
6 or principally supported by a church or convention or association  
7 of churches; or

8           (2) By a duly ordained, commissioned, or licensed minister  
9 of a church in the exercise of such minister's ministry or by a  
10 member of a religious order in the exercise of duties required by  
11 such order; or

12           (3) In the employ of a governmental entity referred to in  
13 subdivision (3) of subsection 1 of section 288.032 if such  
14 service is performed by an individual in the exercise of duties:

15           (a) As an elected official;

16           (b) As a member of a legislative body, or a member of the  
17 judiciary, of a state or political subdivision;

18           (c) As a member of the state national guard or air national  
19 guard;

20           (d) As an employee serving on a temporary basis in case of  
21 fire, storm, snow, earthquake, flood or similar emergency;

22           (e) In a position which, under or pursuant to the laws of  
23 this state, is designated as (i) a major nontenured policy-making  
24 or advisory position, or (ii) a policy-making or advisory  
25 position the performance of the duties of which ordinarily does

1 not require more than eight hours per week; or

2 (4) In a facility conducted for the purpose of carrying out  
3 a program of rehabilitation for individuals whose earning  
4 capacity is impaired by age or physical or mental deficiency or  
5 injury or providing remunerative work for individuals who because  
6 of their impaired physical or mental capacity cannot be readily  
7 absorbed in the competitive labor market, by an individual  
8 receiving such rehabilitation or remunerative work; or

9 (5) As part of an unemployment work-relief or work-training  
10 program assisted or financed in whole or in part by any federal  
11 agency or an agency of a state or political subdivision thereof,  
12 by an individual receiving such work relief or work training; or

13 (6) By an inmate of a custodial or penal institution; or

14 (7) In the employ of a school, college, or university, if  
15 such service is performed (i) by a student who is enrolled and is  
16 regularly attending classes at such school, college, or  
17 university, or (ii) by the spouse of such a student, if such  
18 spouse is advised, at the time such spouse commences to perform  
19 such service, that (I) the employment of such spouse to perform  
20 such service is provided under a program to provide financial  
21 assistance to such student by such school, college, or  
22 university, and (II) such employment will not be covered by any  
23 program of unemployment insurance.

24 10. The term "employment" shall include the service of an  
25 individual who is a citizen of the United States, performed

1 outside the United States (except in Canada), if:

2 (1) The employer's principal place of business in the  
3 United States is located in this state; or

4 (2) The employer has no place of business in the United  
5 States, but:

6 (a) The employer is an individual who is a resident of this  
7 state; or

8 (b) The employer is a corporation which is organized under  
9 the laws of this state; or

10 (c) The employer is a partnership or a trust and the number  
11 of the partners or trustees who are residents of this state is  
12 greater than the number who are residents of any one other state;  
13 or

14 (3) None of the criteria of subdivisions (1) and (2) of  
15 this subsection is met but the employer has elected coverage in  
16 this state or, the employer having failed to elect coverage in  
17 any state, the individual has filed a claim for benefits, based  
18 on such service, under the law of this state;

19 (4) As used in this subsection and in subsection 11 of this  
20 section, the term "United States" includes the states, the  
21 District of Columbia and the Commonwealth of Puerto Rico.

22 11. An "American employer", for the purposes of subsection  
23 10 of this section, means a person who is:

24 (1) An individual who is a resident of the United States;  
25 or

1           (2) A partnership, if two-thirds or more of the partners  
2 are residents of the United States; or

3           (3) A trust, if all of the trustees are residents of the  
4 United States; or

5           (4) A corporation organized under the laws of the United  
6 States or of any state.

7           12. The term "employment" shall not include:

8           (1) Service performed by an individual in agricultural  
9 labor;

10          (a) For the purposes of this subdivision, the term  
11 "agricultural labor" means remunerated service performed:

12           a. On a farm, in the employ of any person, in connection  
13 with cultivating the soil, or in connection with raising or  
14 harvesting any agricultural or horticultural commodity, including  
15 the raising, shearing, feeding, caring for, training, and  
16 management of livestock, bees, poultry, and furbearing animals  
17 and wildlife;

18           b. In the employ of the owner or tenant or other operator  
19 of a farm, in connection with the operation, management,  
20 conservation, improvement, or maintenance of such farm and its  
21 tools and equipment, or in salvaging timber or clearing land of  
22 brush and other debris left by a hurricane, if the major part of  
23 such service is performed on a farm;

24           c. In connection with the production or harvesting of any  
25 commodity defined as an agricultural commodity in Section 15(g)



1 of the Federal Agricultural Marketing Act, as amended (46 Stat.  
2 1550, Sec. 3; 12 U.S.C. 1441j), or in connection with the  
3 ginning of cotton, or in connection with the operation or  
4 maintenance of ditches, canals, reservoirs, or waterways, not  
5 owned or operated for profit, used exclusively for supplying and  
6 storing water for farming purposes;

7 d. i. In the employ of the operator of a farm in handling,  
8 planting, drying, packing, packaging, processing, freezing,  
9 grading, storing, or delivering to storage or to market or to a  
10 carrier for transportation to market, in its unmanufactured  
11 state, any agricultural or horticultural commodity; but only if  
12 such operator produced more than one-half of the commodity with  
13 respect to which such service is performed;

14 ii. In the employ of a group of operators of farms (or a  
15 cooperative organization of which such operators are members) in  
16 the performance of services described in item i of this  
17 subparagraph, but only if such operators produced more than  
18 one-half of the commodity with respect to which such service is  
19 performed;

20 iii. The provisions of items i and ii of this subparagraph  
21 shall not be deemed to be applicable with respect to service  
22 performed in connection with commercial canning or commercial  
23 freezing or in connection with any agricultural or horticultural  
24 commodity after its delivery to a terminal market for  
25 distribution for consumption; or

1           e. On a farm operated for profit if such service is not in  
2 the course of the employer's trade or business. As used in this  
3 paragraph, the term "farm" includes stock, dairy, poultry, fruit,  
4 furbearing animals, and truck farms, plantations, ranches,  
5 nurseries, ranges, greenhouses or other similar structures, used  
6 primarily for the raising of agricultural or horticultural  
7 commodities, and orchards;

8           (b) The term "employment" shall include service performed  
9 after December 31, 1977, by an individual in agricultural labor  
10 as defined in paragraph (a) of this subdivision when such service  
11 is performed for a person who, during any calendar quarter, paid  
12 remuneration in cash of twenty thousand dollars or more to  
13 individuals employed in agricultural labor or for some portion of  
14 a day in a calendar year in each of twenty different calendar  
15 weeks, whether or not such weeks were consecutive, employed in  
16 agricultural labor ten or more individuals, regardless of whether  
17 they were employed at the same moment of time;

18           (c) For the purposes of this subsection any individual who  
19 is a member of a crew furnished by a crew leader to perform  
20 service in agricultural labor for any other person shall be  
21 considered as employed by such crew leader:

22           a. If such crew leader holds a valid certificate of  
23 registration under the Farm Labor Contractor Registration Act of  
24 1963; or substantially all the members of such crew operate or  
25 maintain tractors, mechanized harvesting or crop-dusting

1 equipment, or any other mechanized equipment, which is provided  
2 by such crew leader; and

3 b. If such individual is not in employment by such other  
4 person;

5 c. If any individual is furnished by a crew leader to  
6 perform service in agricultural labor for any other person and  
7 that individual is not in the employment of the crew leader:

8 i. Such other person and not the crew leader shall be  
9 treated as the employer of such individual; and

10 ii. Such other person shall be treated as having paid cash  
11 remuneration to such individual in an amount equal to the amount  
12 of cash remuneration paid to such individual by the crew leader  
13 (either on his or her own behalf or on behalf of such other  
14 person) for the service in agricultural labor performed for such  
15 other person;

16 d. For the purposes of this subsection, the term "crew  
17 leader" means an individual who:

18 i. Furnishes individuals to perform service in agricultural  
19 labor for any other person;

20 ii. Pays (either on his or her own behalf or on behalf of  
21 such other person) the individuals so furnished by him or her for  
22 the service in agricultural labor performed by them; and

23 iii. Has not entered into a written agreement with such  
24 other person under which such individual is designated as in  
25 employment by such other person;

1           (2) Domestic service in a private home except as provided  
2 in subsection 13 of this section;

3           (3) Service performed by an individual under the age of  
4 eighteen years in the delivery or distribution of newspapers or  
5 shopping news but shall not include delivery or distribution to  
6 any point for subsequent delivery or distribution;

7           (4) Service performed by an individual in, and at the time  
8 of, the sale of newspapers or magazines to ultimate consumers  
9 under an arrangement under which the newspapers or magazines are  
10 to be sold by him or her at a fixed price, his or her  
11 compensation being based on the retention of the excess of such  
12 price over the amount at which the newspapers or magazines are  
13 charged to him or her, whether or not he or she is guaranteed a  
14 minimum amount of compensation for such service, or is entitled  
15 to be credited with the unsold newspapers or magazines turned  
16 back;

17           (5) Service performed by an individual in the employ of his  
18 or her son, daughter, or spouse, and service performed by a child  
19 under the age of twenty-one in the employ of his or her father or  
20 mother;

21           (6) Except as otherwise provided in this law, service  
22 performed in the employ of a corporation, community chest, fund  
23 or foundation, organized and operated exclusively for religious,  
24 charitable, scientific, literary, or educational purposes, or for  
25 the prevention of cruelty to children or animals, no part of the

1 net earnings of which inures to the benefit of any private  
2 shareholder or individual;

3 (7) Services with respect to which unemployment insurance  
4 is payable under an unemployment insurance system established by  
5 an act of Congress;

6 (8) Service performed in the employ of a foreign  
7 government;

8 (9) Service performed in the employ of an instrumentality  
9 wholly owned by a foreign government:

10 (a) If the service is of a character similar to that  
11 performed in foreign countries by employees of the United States  
12 government or of an instrumentality thereof; and

13 (b) If the division finds that the foreign government, with  
14 respect to whose instrumentality exemption is claimed, grants an  
15 equivalent exemption with respect to similar service performed in  
16 the foreign country by employees of the United States government  
17 and of instrumentalities thereof. The certification of the  
18 United States Secretary of State to the United States Secretary  
19 of Treasury shall constitute prima facie evidence of such  
20 equivalent exemption;

21 (10) Service covered by an arrangement between the division  
22 and the agency charged with the administration of any other state  
23 or federal unemployment insurance law pursuant to which all  
24 services performed by an individual for an employing unit during  
25 the period covered by the employing unit's approved election are

1 deemed to be performed entirely within the jurisdiction of such  
2 other state or federal agency;

3 (11) Service performed in any calendar quarter in the  
4 employ of a school, college or university not otherwise excluded,  
5 if such service is performed by a student who is enrolled and  
6 regularly attending classes at such school, college, or  
7 university, and the remuneration for such service does not exceed  
8 fifty dollars (exclusive of board, room, and tuition);

9 (12) Service performed by an individual for a person as a  
10 licensed insurance agent, a licensed insurance broker, or an  
11 insurance solicitor, if all such service performed by such  
12 individual for such person is performed for remuneration solely  
13 by way of commissions;

14 (13) Domestic service performed in the employ of a local  
15 college club or of a local chapter of a college fraternity or  
16 sorority, except as provided in subsection 13 of this section;

17 (14) Services performed after March 31, 1982, in programs  
18 authorized and funded by the Comprehensive Employment and  
19 Training Act by participants of such programs, except those  
20 programs with respect to which unemployment insurance coverage is  
21 required by the Comprehensive Employment and Training Act or  
22 regulations issued pursuant thereto;

23 (15) Service performed by an individual who is enrolled at  
24 a nonprofit or public educational institution which normally  
25 maintains a regular faculty and curriculum and normally has a

1 regularly organized body of students in attendance at the place  
2 where its educational activities are carried on, as a student in  
3 a full-time program, taken for credit at such institution, which  
4 combines academic instruction with work experience, if such  
5 service is an integral part of such program, and such institution  
6 has so certified to the employer; except, that this subdivision  
7 shall not apply to service performed in a program established for  
8 or on behalf of an employer or group of employers;

9 (16) Services performed by a licensed real estate  
10 salesperson or licensed real estate broker if at least eighty  
11 percent of the remuneration, whether or not paid in cash, for the  
12 services performed rather than to the number of hours worked is  
13 directly related to sales performed pursuant to a written  
14 contract between such individual and the person for whom the  
15 services are performed and such contract provides that the  
16 individual will not be treated as an employee with respect to  
17 such services for federal tax purposes;

18 (17) Services performed as a direct seller who is engaged  
19 in the trade or business of the delivering or distribution of  
20 newspapers or shopping news, including any services directly  
21 related to such trade or business, or services performed as a  
22 direct seller who is engaged in the trade or business of selling,  
23 or soliciting the sale of, consumer products in the home or  
24 otherwise than in, or affiliated with, a permanent, fixed retail  
25 establishment, if eighty percent or more of the remuneration,

1       whether or not paid in cash, for the services performed rather  
2       than the number of hours worked is directly related to sales  
3       performed pursuant to a written contract between such direct  
4       seller and the person for whom the services are performed, and  
5       such contract provides that the individual will not be treated as  
6       an employee with respect to such services for federal tax  
7       purposes;

8           (18)   Services performed as a volunteer research subject who  
9       is paid on a per study basis for scientific, medical or  
10      drug-related testing for any organization other than one  
11      described in Section 501(c)(3) of the Internal Revenue Code or  
12      any governmental entity.

13           13.   The term "employment" shall include domestic service as  
14      defined in subdivisions (2) and [(12)] (13) of subsection 12 of  
15      this section performed after December 31, 1977, if the employing  
16      unit for which such service is performed paid cash wages of one  
17      thousand dollars or more for such services in any calendar  
18      quarter after December 31, 1977.

19           14.   The term "employment" shall include or exclude the  
20      entire service of an individual for an employing unit during a  
21      pay period in which such individual's services are not all  
22      excluded under the foregoing provisions, on the following basis:  
23      if the services performed during one-half or more of any pay  
24      period constitute employment as otherwise defined in this law,  
25      all the services performed during such period shall be deemed to



1 be employment; but if the services performed during more than  
2 one-half of any such pay period do not constitute employment as  
3 otherwise defined in this law, then none of the services for such  
4 period shall be deemed to be employment. (As used in this  
5 subsection, the term "pay period" means a period of not more than  
6 thirty-one consecutive days for which a payment of remuneration  
7 is ordinarily made to the individual by the employing unit  
8 employing such individual.) This subsection shall not be  
9 applicable with respect to service performed in a pay period  
10 where any such service is excluded pursuant to subdivision [(7)]  
11 (8) of subsection 12 of this section.

12 15. The term "employment" shall not include the services of  
13 a full-time student who performed such services in the employ of  
14 an organized summer camp for less than thirteen calendar weeks in  
15 such calendar year.

16 16. For the purpose of subsection 15 of this section, an  
17 individual shall be treated as a full-time student for any  
18 period:

19 (1) During which the individual is enrolled as a full-time  
20 student at an educational institution; or

21 (2) Which is between academic years or terms if:

22 (a) The individual was enrolled as a full-time student at  
23 an educational institution for the immediately preceding academic  
24 year or term; and

25 (b) There is a reasonable assurance that the individual

1 will be so enrolled for the immediately succeeding academic year  
2 or term after the period described in paragraph (a) of this  
3 subdivision.

4 17. For the purpose of subsection 15 of this section, an  
5 "organized summer camp" shall mean a summer camp which:

6 (1) Did not operate for more than seven months in the  
7 calendar year and did not operate for more than seven months in  
8 the preceding calendar year; or

9 (2) Had average gross receipts for any six months in the  
10 preceding calendar year which were not more than thirty-three and  
11 one-third percent of its average gross receipts for the other six  
12 months in the preceding calendar year.

13 18. The term "employment" shall not mean service performed  
14 by a remodeling salesperson acting as an independent contractor;  
15 however, if the federal Internal Revenue Service determines that  
16 a contractual relationship between a direct provider and an  
17 individual acting as an independent contractor pursuant to the  
18 provisions of this subsection is in fact an employer-employee  
19 relationship for the purposes of federal law, then that  
20 relationship shall be considered as an employer-employee  
21 relationship for the purposes of this chapter.

22 288.036. 1. "Wages" means all remuneration, payable or  
23 paid, for personal services including commissions and bonuses  
24 and, except as provided in subdivision [(8)] (7) of this section,  
25 the cash value of all remuneration paid in any medium other than

1 cash. Gratuities, including tips received from persons other  
2 than the employing unit, shall be considered wages only if  
3 required to be reported as wages pursuant to the Federal  
4 Unemployment Tax Act, 26 U.S.C. Sec. 3306, and shall be, for the  
5 purposes of this chapter, treated as having been paid by the  
6 employing unit. Severance pay shall be considered as wages to  
7 the extent required pursuant to the Federal Unemployment Tax Act,  
8 26 U.S.C. Section 3306(b). Vacation pay and holiday pay shall be  
9 considered as wages for the week with respect to which it is  
10 payable. The term "wages" shall not include:

11 (1) [For the purposes of determining the amount of  
12 contributions due and contribution rates, that part of the  
13 remuneration for employment paid to an individual by an employer  
14 or the employer's predecessors which is in excess of seven  
15 thousand dollars for the calendar years 1988 through 1992, seven  
16 thousand five hundred dollars for the calendar year 1993, eight  
17 thousand five hundred dollars for the calendar years 1994, 1995  
18 and 1996, eight thousand dollars for calendar year 1997, and  
19 eight thousand five hundred dollars for the calendar year 1998,  
20 and the state taxable wage base as determined in subsection 2 of  
21 this section for calendar year 1999, and each calendar year  
22 thereafter, unless that part of the remuneration is subject to a  
23 tax pursuant to a federal law imposing a tax against which credit  
24 may be taken for contributions required to be paid into a state  
25 unemployment fund; except that:

1           (a) In addition to the taxable wage, as defined in this  
2 subdivision, if on December 31, 1995, or on any December  
3 thirty-first thereafter, the balance in the unemployment  
4 insurance trust fund, less any federal advances, is less than one  
5 hundred million dollars, then the amount of the taxable wage then  
6 in effect shall be increased by five hundred dollars for all  
7 succeeding calendar years;

8           (b) If on December 31, 1995, or any December thirty-first  
9 thereafter, the balance in the unemployment insurance trust fund,  
10 less any federal advances, is two hundred and fifty million  
11 dollars or more, then the amount of the taxable wage then in  
12 effect shall be reduced by five hundred dollars, but not below  
13 that part of the remuneration which is subject to a tax pursuant  
14 to a federal law imposing a tax against which credit may be taken  
15 for contributions required to be paid into a state unemployment  
16 fund;

17           (2)] The amount of any payment made (including any amount  
18 paid by an employing unit for insurance or annuities, or into a  
19 fund, to provide for any such payment) to, or on behalf of, an  
20 individual under a plan or system established by an employing  
21 unit which makes provision generally for individuals performing  
22 services for it or for a class or classes of such individuals, on  
23 account of:

24           (a) Sickness or accident disability, but in case of  
25 payments made to an employee or any of the employee's dependents

1       this paragraph shall exclude from the term "wages" only payments  
2       which are received pursuant to a workers' compensation law; or

3               (b) Medical and hospitalization expenses in connection with  
4       sickness or accident disability; or

5               (c) Death;

6               [(3)] (2) The amount of any payment on account of sickness  
7       or accident disability, or medical or hospitalization expenses in  
8       connection with sickness or accident disability, made by an  
9       employing unit to, or on behalf of, an individual performing  
10      services for it after the expiration of six calendar months  
11      following the last calendar month in which the individual  
12      performed services for such employing unit;

13              [(4)] (3) The amount of any payment made by an employing  
14      unit to, or on behalf of, an individual performing services for  
15      it or his or her beneficiary:

16              (a) From or to a trust described in 26 U.S.C. 401(a) which  
17      is exempt from tax pursuant to 26 U.S.C. 501(a) at the time of  
18      such payment unless such payment is made to an employee of the  
19      trust as remuneration for services rendered as such an employee  
20      and not as a beneficiary of the trust; or

21              (b) Under or to an annuity plan which, at the time of such  
22      payments, meets the requirements of section 404(a)(2) of the  
23      Federal Internal Revenue Code (26 U.S.C.A. Sec. 404);

24              [(5)] (4) The amount of any payment made by an employing  
25      unit (without deduction from the remuneration of the individual

1 in employment) of the tax imposed pursuant to section 3101 of the  
2 Federal Internal Revenue Code (26 U.S.C.A. Sec. 3101) upon an  
3 individual with respect to remuneration paid to an employee for  
4 domestic service in a private home or for agricultural labor;

5 [(6)] (5) Remuneration paid in any medium other than cash  
6 to an individual for services not in the course of the employing  
7 unit's trade or business;

8 [(7)] (6) Remuneration paid in the form of meals provided  
9 to an individual in the service of an employing unit where such  
10 remuneration is furnished on the employer's premises and at the  
11 employer's convenience, except that remuneration in the form of  
12 meals that is considered wages and required to be reported as  
13 wages pursuant to the Federal Unemployment Tax Act, 26 U.S.C.  
14 Sec. 3306 shall be reported as wages as required thereunder;

15 [(8)] (7) For the purpose of determining wages paid for  
16 agricultural labor as defined in paragraph (b) of subdivision (1)  
17 of subsection 12 of section 288.034 and for domestic service as  
18 defined in subsection 13 of section 288.034, only cash wages paid  
19 shall be considered;

20 [(9)] (8) Beginning on October 1, 1996, any payment to, or  
21 on behalf of, an employee or the employee's beneficiary under a  
22 cafeteria plan, if such payment would not be treated as wages  
23 pursuant to the Federal Unemployment Tax Act.

24 2. The increases or decreases to the state taxable wage  
25 base for calendar year [1999] 2005, and each calendar year

1 thereafter, shall be determined by the provisions within this  
2 subsection. On January 1, 2005, the state taxable wage base for  
3 calendar year [1999, and] 2005 shall be ten thousand dollars for  
4 the balance of the calendar year. The state taxable wage base  
5 for each calendar year thereafter[,] shall be determined by the  
6 preceding September thirtieth balance of the unemployment  
7 compensation trust fund, less any outstanding federal Title XII  
8 advances received pursuant to section 288.330, or if the fund is  
9 not utilizing moneys advanced by the federal government, then  
10 less the principal, interest, and administrative expenses related  
11 to credit instruments issued under section 288.330, or the  
12 principal, interest, and administrative expenses related to  
13 financial agreements under subdivision (17) of subsection 2 of  
14 section 288.330, or the principal, interest, and administrative  
15 expenses related to a combination of credit instruments and  
16 financial agreements. When the September thirtieth unemployment  
17 compensation trust fund balance, or, if the average balance, less  
18 any federal advances of the unemployment compensation trust fund  
19 of the four preceding quarters (September thirtieth, June  
20 thirtieth, March thirty-first, and December thirty-first of the  
21 preceding calendar year) is less any outstanding federal Title  
22 XII advances received pursuant to section 288.330, is:

23 (1) Less than, or equal to, three hundred fifty million  
24 dollars, then the wage base shall increase by [five hundred] one  
25 thousand dollars; or

1           (2)   ~~Four~~ Six hundred fifty million or more, then the  
2   state taxable wage base for the subsequent calendar year shall be  
3   decreased by five hundred dollars. In no event, however, shall  
4   the state taxable wage base increase beyond ~~ten~~ twelve thousand  
5   ~~five hundred~~ dollars, or decrease to less than seven thousand  
6   dollars.

7   For any calendar year, the state taxable wage base shall not be  
8   reduced to less than that part of the remuneration which is  
9   subject to a tax under a federal law imposing a tax against which  
10   credit may be taken for contributions required to be paid into a  
11   state unemployment compensation trust fund. Nothing in this  
12   section shall be construed to prevent the wage base from  
13   increasing or decreasing by increments of five hundred dollars.

14           288.038. With respect to initial claims filed during  
15   calendar ~~years 1998, 1999, 2000 and 2001~~ 2005 and each calendar  
16   year thereafter, the "maximum weekly benefit amount" means four  
17   percent of the total wages paid to an eligible insured worker  
18   during ~~that quarter~~ the average of the two highest quarters of  
19   the worker's base period [in which the worker's wages were the  
20   highest], but the maximum weekly benefit amount shall not exceed  
21   ~~two hundred five dollars in the calendar year 1998, two hundred~~  
22   ~~twenty dollars in the calendar year 1999, two hundred thirty-five~~  
23   ~~dollars in the calendar year 2000, and] two hundred fifty dollars~~  
24   in the calendar ~~year 2001~~ years 2004, 2005, and 2006 two



1 hundred seventy-five dollars for calendar year 2007 and 2008, two  
2 hundred ninety dollars in calendar year 2009, three hundred  
3 dollars in calendar year 2010, and each calendar year thereafter.

4 If such benefit amount is not a multiple of one dollar, such  
5 amount shall be reduced to the nearest lower full dollar amount.

6 288.040. 1. A claimant who is unemployed and has been  
7 determined to be an insured worker shall be eligible for benefits  
8 for any week only if the deputy finds that:

9 (1) The claimant has registered for work at and thereafter  
10 has continued to report at an employment office in accordance  
11 with such regulations as the division may prescribe;

12 (2) The claimant is able to work and is available for work.  
13 No person shall be deemed available for work unless such person  
14 has been and is actively and earnestly seeking work. Upon the  
15 filing of an initial or renewed claim, and prior to the filing of  
16 each weekly claim thereafter, the deputy shall notify each  
17 claimant of the number of work search contacts required to  
18 constitute an active search for work. No person shall be  
19 considered not available for work, pursuant to this subdivision,  
20 solely because he or she is a substitute teacher or is on jury  
21 duty. A claimant shall not be determined to be ineligible  
22 pursuant to this subdivision because of not actively and  
23 earnestly seeking work if:

24 (a) The claimant is participating in training approved  
25 pursuant to Section 236 of the Trade Act of 1974, as amended, (19

1 U.S.C.A. Sec. 2296, as amended); [or]

2 (b) The claimant is temporarily unemployed through no fault  
3 of his or her own and has a definite recall date within eight  
4 weeks of his or her first day of unemployment; however, upon  
5 application of the employer responsible for the claimant's  
6 unemployment, such eight-week period may be extended not to  
7 exceed a total of sixteen weeks at the discretion of the  
8 director;

9 (3) The claimant has reported in person to an office of the  
10 division as directed by the deputy, but at least once every four  
11 weeks, except that a claimant shall be exempted from the  
12 reporting requirement of this subdivision if:

13 (a) The claimant is claiming benefits in accordance with  
14 division regulations dealing with partial or temporary total  
15 unemployment; or

16 (b) The claimant is temporarily unemployed through no fault  
17 of his or her own and has a definite recall date within eight  
18 weeks of his or her first day of unemployment; or

19 (c) The claimant resides in a county with an unemployment  
20 rate, as published by the division, of ten percent or more and in  
21 which the county seat is more than forty miles from the nearest  
22 division office;

23 (d) The director of the division of employment security has  
24 determined that the claimant belongs to a group or class of  
25 workers whose opportunities for reemployment will not be enhanced

1 by reporting in person, or is prevented from reporting due to  
2 emergency conditions that limit access by the general public to  
3 an office that serves the area where the claimant resides, but  
4 only during the time such circumstances exist.

5 Ineligibility pursuant to this subdivision shall begin on the  
6 first day of the week which the claimant was scheduled to claim  
7 and shall end on the last day of the week preceding the week  
8 during which the claimant does report in person to the division's  
9 office;

10 (4) Prior to the first week of a period of total or partial  
11 unemployment for which the claimant claims benefits he or she has  
12 been totally or partially unemployed for a waiting period of one  
13 week. No more than one waiting week will be required in any  
14 benefit year. [The one-week waiting period shall become  
15 compensable after unemployment during which benefits are payable  
16 for nine consecutive weeks.] No week shall be counted as a week  
17 of total or partial unemployment for the purposes of this  
18 subsection unless it occurs within the benefit year which  
19 includes the week with respect to which the claimant claims  
20 benefits;

21 (5) The claimant has made a claim for benefits;

22 (6) The claimant is participating in reemployment services,  
23 such as job search assistance services, as directed by the deputy  
24 if the claimant has been determined to be likely to exhaust

1 regular benefits and to need reemployment services pursuant to a  
2 profiling system established by the division, unless the deputy  
3 determines that:

4 (a) The individual has completed such reemployment  
5 services; or

6 (b) There is justifiable cause for the claimant's failure  
7 to participate in such reemployment services.

8 2. A claimant shall be ineligible for waiting week credit  
9 or benefits for any week for which the deputy finds he or she is  
10 or has been suspended by his or her most recent employer for  
11 misconduct connected with his or her work. Suspensions of four  
12 weeks or more shall be treated as discharges.

13 3. (1) Benefits based on "service in employment", defined  
14 in subsections 7 and 8 of section 288.034, shall be payable in  
15 the same amount, on the same terms and subject to the same  
16 conditions as compensation payable on the basis of other service  
17 subject to this law; except that:

18 (a) With respect to service performed in an instructional,  
19 research, or principal administrative capacity for an educational  
20 institution, benefits shall not be paid based on such services  
21 for any week of unemployment commencing during the period between  
22 two successive academic years or terms, or during a similar  
23 period between two regular but not successive terms, or during a  
24 period of paid sabbatical leave provided for in the individual's  
25 contract, to any individual if such individual performs such

1 services in the first of such academic years (or terms) and if  
2 there is a contract or a reasonable assurance that such  
3 individual will perform services in any such capacity for any  
4 educational institution in the second of such academic years or  
5 terms;

6 (b) With respect to services performed in any capacity  
7 (other than instructional, research, or principal administrative  
8 capacity) for an educational institution, benefits shall not be  
9 paid on the basis of such services to any individual for any week  
10 which commences during a period between two successive academic  
11 years or terms if such individual performs such services in the  
12 first of such academic years or terms and there is a contract or  
13 a reasonable assurance that such individual will perform such  
14 services in the second of such academic years or terms;

15 (c) With respect to services described in paragraphs (a)  
16 and (b) of this subdivision, benefits shall not be paid on the  
17 basis of such services to any individual for any week which  
18 commences during an established and customary vacation period or  
19 holiday recess if such individual performed such services in the  
20 period immediately before such vacation period or holiday recess,  
21 and there is reasonable assurance that such individual will  
22 perform such services immediately following such vacation period  
23 or holiday recess;

24 (d) With respect to services described in paragraphs (a)  
25 and (b) of this subdivision, benefits payable on the basis of

1 services in any such capacity shall be denied as specified in  
2 paragraphs (a), (b), and (c) of this subdivision, to any  
3 individual who performed such services at an educational  
4 institution while in the employ of an educational service agency,  
5 and for this purpose the term "educational service agency" means  
6 a governmental agency or governmental entity which is established  
7 and operated exclusively for the purpose of providing such  
8 services to one or more educational institutions.

9 (2) If compensation is denied for any week pursuant to  
10 paragraph (b) or (d) of subdivision (1) of this subsection, to  
11 any individual performing services at an educational institution  
12 in any capacity (other than instructional, research or principal  
13 administrative capacity), and such individual was not offered an  
14 opportunity to perform such services for the second of such  
15 academic years or terms, such individual shall be entitled to a  
16 retroactive payment of the compensation for each week for which  
17 the individual filed a timely claim for compensation and for  
18 which compensation was denied solely by reason of paragraph (b)  
19 or (d) of subdivision (1) of this subsection.

20 4. (1) A claimant shall be ineligible for waiting week  
21 credit, benefits or shared work benefits for any week for which  
22 he or she is receiving or has received remuneration exceeding his  
23 or her weekly benefit amount or shared work benefit amount in the  
24 form of:

25 (a) Compensation for temporary partial disability pursuant

1 to the workers' compensation law of any state or pursuant to a  
2 similar law of the United States;

3 (b) A governmental or other pension, retirement or retired  
4 pay, annuity, or other similar periodic payment which is based on  
5 the previous work of such claimant to the extent that such  
6 payment is provided from funds provided by a base period or  
7 chargeable employer pursuant to a plan maintained or contributed  
8 to by such employer; but, except for such payments made pursuant  
9 to the Social Security Act or the Railroad Retirement Act of 1974  
10 (or the corresponding provisions of prior law), the provisions of  
11 this paragraph shall not apply if the services performed for such  
12 employer by the claimant after the beginning of the base period  
13 (or remuneration for such services) do not affect eligibility for  
14 or increase the amount of such pension, retirement or retired  
15 pay, annuity or similar payment.

16 (2) If the remuneration referred to in this subsection is  
17 less than the benefits which would otherwise be due, the claimant  
18 shall be entitled to receive for such week, if otherwise  
19 eligible, benefits reduced by the amount of such remuneration,  
20 and, if such benefit is not a multiple of one dollar, such amount  
21 shall be lowered to the next multiple of one dollar.

22 (3) Notwithstanding the provisions of subdivisions (1) and  
23 (2) of this subsection, if a claimant has contributed in any way  
24 to the Social Security Act or the Railroad Retirement Act of  
25 1974, or the corresponding provisions of prior law, no part of

1 the payments received pursuant to such federal law shall be  
2 deductible from the amount of benefits received pursuant to this  
3 chapter.

4 5. A claimant shall be ineligible for waiting week credit  
5 or benefits for any week for which or a part of which he or she  
6 has received or is seeking unemployment benefits pursuant to an  
7 unemployment insurance law of another state or the United States;  
8 provided, that if it be finally determined that the claimant is  
9 not entitled to such unemployment benefits, such ineligibility  
10 shall not apply.

11 6. (1) A claimant shall be ineligible for waiting week  
12 credit or benefits for any week for which the deputy finds that  
13 such claimant's total or partial unemployment is due to a  
14 stoppage of work which exists because of a labor dispute in the  
15 factory, establishment or other premises in which such claimant  
16 is or was last employed. In the event the claimant secures other  
17 employment from which he or she is separated during the existence  
18 of the labor dispute, the claimant must have obtained bona fide  
19 employment as a permanent employee for at least the major part of  
20 each of two weeks in such subsequent employment to terminate his  
21 or her ineligibility. If, in any case, separate branches of work  
22 which are commonly conducted as separate businesses at separate  
23 premises are conducted in separate departments of the same  
24 premises, each such department shall for the purposes of this  
25 subsection be deemed to be a separate factory, establishment or



1 other premises. This subsection shall not apply if it is shown  
2 to the satisfaction of the deputy that:

3 (a) The claimant is not participating in or financing or  
4 directly interested in the labor dispute which caused the  
5 stoppage of work; and

6 (b) The claimant does not belong to a grade or class of  
7 workers of which, immediately preceding the commencement of the  
8 stoppage, there were members employed at the premises at which  
9 the stoppage occurs, any of whom are participating in or  
10 financing or directly interested in the dispute.

11 (2) "Stoppage of work" as used in this subsection means a  
12 substantial diminution of the activities, production or services  
13 at the establishment, plant, factory or premises of the employing  
14 unit. This definition shall not apply to a strike where the  
15 employees in the bargaining unit who initiated the strike are  
16 participating in the strike. Such employees shall not be  
17 eligible for waiting week credit or benefits during the period  
18 when the strike is in effect, regardless of diminution, unless  
19 the employer has been found guilty of an unfair labor practice by  
20 the National Labor Relations Board or a federal court of law for  
21 an act or actions preceding or during the strike.

22 7. On or after January 1, 1978, benefits shall not be paid  
23 to any individual on the basis of any services, substantially all  
24 of which consist of participating in sports or athletic events or  
25 training or preparing to so participate, for any week which

1 commences during the period between two successive sport seasons  
2 (or similar periods) if such individual performed such services  
3 in the first of such seasons (or similar periods) and there is a  
4 reasonable assurance that such individual will perform such  
5 services in the later of such seasons (or similar periods).

6 8. Benefits shall not be payable on the basis of services  
7 performed by an alien, unless such alien is an individual who was  
8 lawfully admitted for permanent residence at the time such  
9 services were performed, was lawfully present for purposes of  
10 performing such services, or was permanently residing in the  
11 United States under color of law at the time such services were  
12 performed (including an alien who was lawfully present in the  
13 United States as a result of the application of the provisions of  
14 Section 212(d)(5) of the Immigration and Nationality Act).

15 (1) Any data or information required of individuals  
16 applying for benefits to determine whether benefits are not  
17 payable to them because of their alien status shall be uniformly  
18 required from all applicants for benefits.

19 (2) In the case of an individual whose application for  
20 benefits would otherwise be approved, no determination that  
21 benefits to such individual are not payable because of such  
22 individual's alien status shall be made except upon a  
23 preponderance of the evidence.

24 288.045. 1. For the purpose of this chapter, a  
25 professionally administered and documented positive chemical test

1 result for a controlled substance as defined under section  
2 195.010, RSMo, or for blood alcohol concentration level of eight-  
3 hundredths of one percent or more by weight of alcohol in the  
4 claimant's blood, regardless of whether the employer presents  
5 evidence of the exposure to the controlled substance or alcohol  
6 having had an adverse affect on such employee's ability to  
7 fulfill their on-the-job responsibilities, shall be deemed  
8 misconduct connected with work.

9 2. The application of the provisions of subsections 2 to 11  
10 of this section is subject to the provisions of any applicable  
11 collective bargaining agreement. Nothing in this chapter is  
12 intended to authorize any employer to test any applicant or  
13 employee for alcohol or drugs in any manner inconsistent with  
14 federal constitutional or statutory requirements, including those  
15 imposed by the Americans with Disabilities Act and the National  
16 Labor Relations Act.

17 3. The employer shall have notified the employee of the  
18 employer's controlled substance and alcohol workplace policy by  
19 conspicuously posting the policy in the workplace, or by  
20 including the policy in a written personnel policy or an employee  
21 handbook, or by a statement of such policy in a collective  
22 bargaining agreement governing employment of the employee. The  
23 policy shall state that a positive test result shall be deemed  
24 misconduct connected with work and may result in suspension or  
25 termination of employment.

1       4. All specimen collection and testing for drugs and  
2 alcohol under this chapter shall be performed in accordance with  
3 the procedures provided for by the United States Department of  
4 Transportation rules for workplace drug and alcohol testing  
5 compiled at 49 C.F.R., Part 40. Any employer that performs drug  
6 testing or specimen collection shall use chain-of-custody  
7 procedures established by regulations of the United States  
8 Department of Transportation. "Specimen" means tissue, fluid, or  
9 a product of the human body capable of revealing the presence of  
10 alcohol or drugs or their metabolites. "Chain of custody" refers  
11 to the methodology of tracking specified materials or substances  
12 for the purpose of maintaining control and accountability from  
13 initial collection to final disposition for all such materials or  
14 substances, and providing for accountability at each stage in  
15 handling, testing, and storing specimens and reporting test  
16 results.

17       5. For this section to be applicable, the employee may  
18 request that a confirmation test on the specimen be conducted.  
19 "Confirmation test" means a second analytical procedure used to  
20 identify the presence of a specific drug or alcohol or metabolite  
21 in a specimen, which test must be different in scientific  
22 principle from that of the initial test procedure and must be  
23 capable of providing requisite specificity, sensitivity, and  
24 quantitative accuracy.

25       6. (1) For this section to be applicable, testing shall be

1 conducted only if there is sufficient cause or a reasonable  
2 suspicion to suspect alcohol or controlled substance use by the  
3 claimant or the employer's policy clearly states that there will  
4 be random testing, then testing of the claimant may be conducted  
5 randomly. Reasonable suspicion drug testing means drug or  
6 alcohol testing based on a belief that an employee is using or  
7 has used drugs or alcohol in violation of the covered employer's  
8 policy drawn from specific objective and articulable facts and  
9 reasonable inferences drawn from those facts in light of  
10 experience. Among other things, such facts and inferences may be  
11 based upon:

12 (a) Observable phenomena while at work, such as direct  
13 observation of drug or alcohol use or of the physical symptoms or  
14 manifestations of being under the influence of a drug or alcohol;

15 (b) Abnormal conduct or erratic behavior while at work or a  
16 significant deterioration in work performance;

17 (c) A report of drug or alcohol use, provided by a reliable  
18 and credible source;

19 (d) Evidence that an individual has tampered with a drug or  
20 alcohol test during employment with the current covered employer;

21 (e) Information that an employee has caused, contributed  
22 to, or been involved in an accident while at work; or

23 (f) Evidence that an employee has used, possessed, sold,  
24 solicited, or transferred drugs or used alcohol while working or  
25 while on the employer's premises or while operating the

1 employer's vehicle, machinery, or equipment;

2 (2) A written record shall be made of the observations  
3 leading to a controlled substances reasonable suspicion test  
4 within twenty-four hours of the observed behavior or before the  
5 results of the test are released, whichever is earlier. A copy  
6 of this documentation shall be given to the employee upon  
7 request, and the original documentation shall be kept  
8 confidential by the employer and shall be retained by the  
9 employer for at least one year.

10 7. Use of a controlled substance as defined under section  
11 195.010, RSMo, under and in conformity with the lawful order of a  
12 healthcare practitioner shall not be deemed to be misconduct  
13 connected with work for the purposes of this section.

14 8. This section shall have no effect on employers who do  
15 not avail themselves of the requirements and regulations for  
16 alcohol and controlled drug testing determinations that are  
17 required to affirm misconduct connected with work findings.

18 9. Any employer that initiates an alcohol and drug testing  
19 policy after January 1, 2005, shall ensure that at least sixty  
20 days elapse between a general one-time notice to all employees  
21 that an alcohol and drug testing workplace policy is being  
22 implemented and the effective date of the program.

23 10. A laboratory may not analyze initial or confirmation  
24 test specimens unless the laboratory is licensed and approved by  
25 the department of health, using criteria established by the

1 United States Department of Health and Human Services as  
2 guidelines for modeling the state drug-free testing programs, or  
3 the laboratory is certified by the United States Department of  
4 Health and Human Services, the College of American Pathologists,  
5 the College of American Pathologists-Forensic Urine Testing  
6 Programs, the Substance Abuse and Mental Health Services  
7 Administration, or such other recognized authority approved by  
8 rule by the director of the department of labor and industrial  
9 relations.

10 11. (1) In applying provisions of this chapter, it is the  
11 intent of the legislature to reject and abrogate previous case  
12 law interpretations of "misconduct connected with work" requiring  
13 a finding of evidence of impairment of work performance,  
14 including but not limited to, the holdings contained in *Baldor*  
15 *Electric Company v. Raylene Reasoner and Missouri Division of*  
16 *Employment Security*, 66 S.W.3d 130 (Mo.App. E.D. 2001).

17 (2) In determining whether or not misconduct connected with  
18 work has occurred, neither the state, any agency of the state,  
19 nor any court of the state of Missouri shall require a finding of  
20 evidence of impairment of work performance.

21 12. Notwithstanding any provision of this chapter to the  
22 contrary, any claimant found to be in violation of this section  
23 shall be subject to the cancellation of all or part of the  
24 claimants wage credits as provided by subsection 2 of section  
25 288.050.

1           288.050. 1. Notwithstanding the other provisions of this  
2 law, a claimant shall be disqualified for waiting week credit or  
3 benefits until after the claimant has earned wages for work  
4 insured pursuant to the unemployment compensation laws of any  
5 state equal to ten times the claimant's weekly benefit amount if  
6 the deputy finds:

7           (1) That the claimant has left work voluntarily without  
8 good cause attributable to such work or to the claimant's  
9 employer[; except that]. A temporary employee of a temporary  
10 help firm will be deemed to have voluntarily quit employment if  
11 the employee does not contact the temporary help firm for  
12 reassignment prior to filing for benefits. Failure to contact  
13 the temporary help firm will not be deemed a voluntary quit  
14 unless the claimant has been advised of the obligation to contact  
15 the firm upon completion of assignments and that unemployment  
16 benefits may be denied for failure to do so. The claimant shall  
17 not be disqualified:

18           (a) If the deputy finds the claimant quit such work for the  
19 purpose of accepting a more remunerative job which the claimant  
20 did accept and earn some wages therein;

21           (b) If the claimant quit temporary work to return to such  
22 claimant's regular employer; or

23           (c) If the deputy finds the individual quit work, which  
24 would have been determined not suitable in accordance with  
25 paragraphs (a) and (b) of subdivision (3) of this subsection,



1       within twenty-eight calendar days of the first day worked;

2           (d) As to initial claims filed after December 31, 1988, if  
3       the claimant presents evidence supported by competent medical  
4       proof that she was forced to leave her work because of pregnancy,  
5       notified her employer of such necessity as soon as practical  
6       under the circumstances, and returned to that employer and  
7       offered her services to that employer as soon as she was  
8       physically able to return to work, as certified by a licensed and  
9       practicing physician, but in no event later than ninety days  
10      after the termination of the pregnancy. An employee shall have  
11      been employed for at least one year with the same employer before  
12      she may be provided benefits pursuant to the provisions of this  
13      paragraph;

14           (2) That the claimant has retired pursuant to the terms of  
15      a labor agreement between the claimant's employer and a union  
16      duly elected by the employees as their official representative or  
17      in accordance with an established policy of the claimant's  
18      employer; or

19           (3) That the claimant failed without good cause either to  
20      apply for available suitable work when so directed by the deputy,  
21      or to accept suitable work when offered the claimant, either  
22      through the division or directly by an employer by whom the  
23      individual was formerly employed, or to return to the  
24      individual's customary self-employment, if any, when so directed  
25      by the deputy. An offer of work shall be conclusively

1 established if an employer notifies the claimant in writing of  
2 such offer by sending an acknowledgment via any form of certified  
3 mail issued by the United States Postal Service stating such  
4 offer to the claimant at the claimant's last known address.  
5 Nothing in this subdivision shall be construed to limit the means  
6 by which the deputy may establish that the claimant has been  
7 sufficiently notified of available work.

8 (a) In determining whether or not any work is suitable for  
9 an individual, the division shall consider, among other factors  
10 and in addition to those enumerated in paragraph (b) of this  
11 subdivision, the degree of risk involved to the individual's  
12 health, safety and morals, the individual's physical fitness and  
13 prior training, the individual's experience and prior earnings,  
14 the individual's length of unemployment, the individual's  
15 prospects for securing work in the individual's customary  
16 occupation, the distance of available work from the individual's  
17 residence and the individual's prospect of obtaining local work;  
18 except that, if an individual has moved from the locality in  
19 which the individual actually resided when such individual was  
20 last employed to a place where there is less probability of the  
21 individual's employment at such individual's usual type of work  
22 and which is more distant from or otherwise less accessible to  
23 the community in which the individual was last employed, work  
24 offered by the individual's most recent employer if similar to  
25 that which such individual performed in such individual's last

1 employment and at wages, hours, and working conditions which are  
2 substantially similar to those prevailing for similar work in  
3 such community, or any work which the individual is capable of  
4 performing at the wages prevailing for such work in the locality  
5 to which the individual has moved, if not hazardous to such  
6 individual's health, safety or morals, shall be deemed suitable  
7 for the individual;

8 (b) Notwithstanding any other provisions of this law, no  
9 work shall be deemed suitable and benefits shall not be denied  
10 pursuant to this law to any otherwise eligible individual for  
11 refusing to accept new work under any of the following  
12 conditions:

13 a. If the position offered is vacant due directly to a  
14 strike, lockout, or other labor dispute;

15 b. If the wages, hours, or other conditions of the work  
16 offered are substantially less favorable to the individual than  
17 those prevailing for similar work in the locality;

18 c. If as a condition of being employed the individual would  
19 be required to join a company union or to resign from or refrain  
20 from joining any bona fide labor organization.

21 2. [Notwithstanding the other provisions of this law,] If a  
22 deputy finds that a claimant has been discharged for misconduct  
23 connected with the claimant's work, such claimant[, depending  
24 upon the seriousness of the misconduct as determined by the  
25 deputy according to the circumstances in each case,] shall be

1 disqualified for waiting week credit [or] and benefits [for not  
2 less than four nor more than sixteen weeks for which the claimant  
3 claims benefits and is otherwise eligible], and no benefits shall  
4 be paid nor shall the cost of any benefits be charged against any  
5 employer for any period of employment within the base period  
6 until the claimant has earned wages for work insured under the  
7 unemployment laws of this state or any other state as prescribed  
8 in this section. In addition to the disqualification for  
9 benefits pursuant to this provision the division may in the more  
10 aggravated cases of misconduct, cancel all or any part of the  
11 individual's wage credits, which were established through the  
12 individual's employment by the employer who discharged such  
13 individual, according to the seriousness of the misconduct. A  
14 disqualification provided for pursuant to this subsection shall  
15 not apply to any week which occurs after the claimant has earned  
16 wages for work insured pursuant to the unemployment compensation  
17 laws of any state in an amount equal to eight times the  
18 claimant's weekly benefit amount.

19 3. [A pattern of] Absenteeism or tardiness may constitute  
20 misconduct regardless of whether the last incident alone [which  
21 results in the discharge] constitutes misconduct. In determining  
22 whether the degree of absenteeism or tardiness constitutes a  
23 pattern for which misconduct may be found, the division shall  
24 consider whether the discharge was the result of a violation of  
25 the employer's attendance policy, provided the employee had

1 received knowledge of such policy prior to the occurrence of any  
2 absence or tardy upon which the discharge is based.

3 4. Notwithstanding the provisions of subsection 1 of this  
4 section, a claimant may not be determined to be disqualified for  
5 benefits because the claimant is in training approved pursuant to  
6 section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A.  
7 Sec. 2296, as amended), or because the claimant left work which  
8 was not "suitable employment" to enter such training. For the  
9 purposes of this subsection "suitable employment" means, with  
10 respect to a worker, work of a substantially equal or higher  
11 skill level than the worker's past adversely affected employment,  
12 and wages for such work at not less than eighty percent of the  
13 worker's average weekly wage as determined for the purposes of  
14 the Trade Act of 1974.

15 288.060. 1. All benefits shall be paid through employment  
16 offices in accordance with such regulations as the division may  
17 prescribe.

18 2. Each eligible insured worker who is totally unemployed  
19 in any week shall be paid for such week a sum equal to his or her  
20 weekly benefit amount.

21 3. Each eligible insured worker who is partially unemployed  
22 in any week shall be paid for such week a partial benefit. Such  
23 partial benefit shall be an amount equal to the difference  
24 between his or her weekly benefit amount and that part of his or  
25 her wages for such week in excess of [twenty] forty dollars, and,

1 if such partial benefit amount is not a multiple of one dollar,  
2 such amount shall be reduced to the nearest lower full dollar  
3 amount. Termination pay, severance pay or pay received by an  
4 eligible insured worker who is a member of the organized militia  
5 for training or duty authorized by section 502(a)(1) of Title 32,  
6 United States Code, [or who is an elected official] shall not be  
7 considered wages for the purpose of this subsection.

8 4. The division shall compute the wage credits for each  
9 individual by crediting him or her with the wages paid to him or  
10 her for insured work during each quarter of his or her base  
11 period or twenty-six times his or her weekly benefit amount,  
12 whichever is the lesser. In addition, if a claimant receives  
13 wages in the form of termination pay or severance pay and such  
14 payment appears in a base period established by the filing of an  
15 initial claim, the claimant may, at his or her option, choose to  
16 have such payment included in the calendar quarter in which it  
17 was paid or choose to have it prorated equally among the quarters  
18 comprising the base period of the claim. The maximum total  
19 amount of benefits payable to any insured worker during any  
20 benefit year shall not exceed twenty-six times his or her weekly  
21 benefit amount, or thirty-three and one-third percent of his or  
22 her wage credits, whichever is the lesser. For the purpose of  
23 this section, wages shall be counted as wage credits for any  
24 benefit year, only if such benefit year begins subsequent to the  
25 date on which the employing unit by whom such wages were paid has

1        become an employer. The wage credits of an individual earned  
2        during the period commencing with the end of a prior base period  
3        and ending on the date on which he or she filed an allowed  
4        initial claim shall not be available for benefit purposes in a  
5        subsequent benefit year unless, in addition thereto, such  
6        individual has subsequently earned either wages for insured work  
7        in an amount equal to at least five times his or her current  
8        weekly benefit amount or wages in an amount equal to at least ten  
9        times his or her current weekly benefit amount.

10        5. In the event that benefits are due a deceased person and  
11        no petition has been filed for the probate of the will or for the  
12        administration of the estate of such person within thirty days  
13        after his or her death, the division may by regulation provide  
14        for the payment of such benefits to such person or persons as the  
15        division finds entitled thereto and every such payment shall be a  
16        valid payment to the same extent as if made to the legal  
17        representatives of the deceased.

18        6. The division is authorized to cancel any benefit warrant  
19        remaining outstanding and unpaid one year after the date of its  
20        issuance and there shall be no liability for the payment of any  
21        such benefit warrant thereafter.

22        7. The division may establish an electronic funds transfer  
23        system to transfer directly to claimants' accounts in financial  
24        institutions benefits payable to them pursuant to this chapter.  
25        To receive benefits by electronic funds transfer, a claimant

1 shall satisfactorily complete a direct deposit application form  
2 authorizing the division to deposit benefit payments into a  
3 designated checking or savings account. Any electronic funds  
4 transfer system created pursuant to this subsection shall be  
5 administered in accordance with regulations prescribed by the  
6 division.

7 8. The division may issue a benefit warrant covering more  
8 than one week of benefits.

9 9. Prior to January 1, 2005, the division shall institute  
10 procedures including, but not limited to, name, date of birth,  
11 and social security verification matches for remote claims filing  
12 via the use of telephone or the Internet in accordance with such  
13 regulations as the division shall prescribe. At a minimum, the  
14 division shall verify the social security number and date of  
15 birth when an individual claimant initially files for  
16 unemployment insurance benefits. If verification information  
17 does not match what is on file in division databases to what the  
18 individual is stating, the division shall require the claimant to  
19 submit a division-approved form requesting an affidavit of  
20 eligibility prior to the payment of additional future benefits.  
21 The division of employment security shall cross-check  
22 unemployment compensation applicants and recipients with Social  
23 Security Administration data maintained by the federal government  
24 on the most frequent basis recommended by the United States  
25 Department of Labor, or absent a recommendation, at least



1     monthly. The division of employment security shall cross-check  
2     at least monthly unemployment compensation applicants and  
3     recipients with department of revenue drivers license databases.

4           288.070. 1. All claims shall be made in accordance with  
5     such regulations as the division may prescribe; except that such  
6     regulations shall not require the filing of a claim for benefits  
7     by the claimant in person for a week of unemployment occurring  
8     immediately prior to the claimant's reemployment, but claims in  
9     such cases may be made by mail, or otherwise if authorized by  
10    regulation. Notice of each initial claim filed by an insured  
11    worker which establishes the beginning of such worker's benefit  
12    year shall be promptly mailed by the division to each base period  
13    employer of such individual and to the last employing unit whose  
14    name is furnished by the individual when such individual files  
15    such claim. In similar manner, a notice of each renewed claim  
16    filed by an insured worker during a benefit year after a period  
17    in such year during which the insured worker was employed shall  
18    be given to the last employing unit whose name is furnished by  
19    the individual when the individual files such renewed claim or to  
20    any other base period or subsequent employer of the worker who  
21    has requested such a notice. Any such base period employer or  
22    any employing unit, which employed the claimant since the  
23    beginning of the base period, who within ten calendar days after  
24    the mailing of notice of the initial claim or a renewed claim to  
25    the employer or employing unit's last known address files a

1 written protest against the allowance of benefits, and any  
2 employing unit from whom the claimant was separated during a week  
3 of continued claim other than a week in which an initial or  
4 renewed claim is effective, shall be deemed an interested party  
5 to any determination allowing benefits during the benefit year  
6 until such time as the issue or issues raised by the protest are  
7 resolved by a determination or decision which has become final.

8 2. A deputy shall promptly examine each initial claim and  
9 make a determination of the claimant's status as an insured  
10 worker. Each such determination shall be based on a written  
11 statement showing the amount of wages for insured work paid to  
12 the claimant by each employer during the claimant's base period  
13 and shall include a finding as to whether such wages meet the  
14 requirements for the claimant to be an insured worker, and, if  
15 so, the first day of the claimant's benefit year, the claimant's  
16 weekly benefit amount, and the maximum total amount of benefits  
17 which may be payable to the claimant for weeks of unemployment in  
18 the claimant's benefit year. The deputy shall in respect to all  
19 claims for benefits thereafter filed by such individual in the  
20 claimant's benefit year make a written determination as to  
21 whether and in what amount the claimant is entitled to benefits  
22 for the week or weeks with respect to which the determination is  
23 made. Whenever claims involve complex questions of law or fact,  
24 the deputy, with the approval of the director, may refer such  
25 claims to the appeals tribunal, without making a determination,

1 for a fair hearing and decision as provided in section 288.190.

2 3. The deputy shall, in writing, promptly notify the  
3 claimant of such deputy's determination on an initial claim,  
4 including the reason therefor, and a copy of the written  
5 statement as provided in subsection 2 of this section. The  
6 deputy shall promptly notify the claimant and all other  
7 interested parties of such deputy's determination on any claim  
8 for benefits and shall give the reason therefor; except that,  
9 where a determination on a later claim for benefits in a benefit  
10 year is the same as the determination on a preceding claim, no  
11 additional notice shall be given. A determination shall be  
12 final, when unappealed, in respect to any claim to which it  
13 applies except that an appeal from a determination on a claim for  
14 benefits shall be considered as an appeal from all later claims  
15 to which the same determination applies. The deputy may,  
16 however, not later than one year following the end of a benefit  
17 year, for good cause, reconsider any determination on any claim  
18 and shall promptly notify the claimant and other interested  
19 parties of such deputy's redetermination and the reasons  
20 therefor. Whenever the deputy shall have notified any interested  
21 employer of the denial of benefits to a claimant for any week or  
22 weeks and shall thereafter allow benefits to such claimant for a  
23 subsequent week or weeks, the deputy shall notify such interested  
24 employer of the beginning date of the allowance of benefits for  
25 such subsequent period.

1           4. Unless the claimant or any interested party within  
2 thirty calendar days after notice of such determination is either  
3 delivered in person or mailed to the last known address of such  
4 claimant or interested party files an appeal from such  
5 determination, it shall be final. If, pursuant to a  
6 determination or redetermination, benefits are payable in any  
7 amount or in respect to any week as to which there is no dispute,  
8 such amount of benefits shall be promptly paid regardless of any  
9 appeal.

10           5. Benefits shall be paid promptly in accordance with a  
11 determination or redetermination pursuant to this section, or the  
12 decision of an appeals tribunal, the labor and industrial  
13 relations commission of Missouri or a reviewing court upon the  
14 issuance of such determination, redetermination or decision  
15 (regardless of the pendency of the period to apply for  
16 reconsideration, file an appeal, or petition for judicial review  
17 as provided in this section, or section 288.190, 288.200, or  
18 288.210, as the case may be, or the pendency of any such  
19 application, appeal, or petition) unless and until such  
20 determination, redetermination or decision has been modified or  
21 reversed by a subsequent redetermination or decision, in which  
22 event benefits shall be paid or denied for weeks of unemployment  
23 thereafter in accordance with such modified or reversed  
24 redetermination or decision.

25           6. Benefits paid during the pendency of the period to apply

1 for reconsideration, file an appeal, or petition for judicial  
2 review or during the pendency of any such application, appeal, or  
3 petition shall be considered as having been due and payable  
4 regardless of any redetermination or decision unless the  
5 modifying or reversing redetermination or decision establishes  
6 that the claimant willfully failed to disclose or falsified any  
7 fact which would have disqualified the claimant or rendered the  
8 claimant ineligible for such benefits as contemplated in  
9 subsection ~~[9]~~ 10 of section 288.380.

10 7. Benefits paid during the pendency of the period to apply  
11 for reconsideration, file an appeal, or petition for judicial  
12 review or during the pendency of any such application, appeal, or  
13 petition which would not have been payable under a  
14 redetermination or decision which becomes final shall not be  
15 chargeable to any employer. Beginning with benefits paid on and  
16 after January 1, 1998, the provisions of this subsection shall  
17 not apply to employers who have elected to make payments in lieu  
18 of contributions pursuant to subsection 3 of section 288.090.

19 8. The ten-day period mentioned in subsection 1 of this  
20 section and the thirty-day period mentioned in subsection 4 of  
21 this section may, for good cause, be extended.

22 288.090. 1. Contributions shall accrue and become payable  
23 by each employer for each calendar year in which he is subject to  
24 this law. Such contributions shall become due and be paid by  
25 each employer to the division for the fund on or before the last

1 day of the month following each calendar quarterly period of  
2 three months except when regulation requires monthly payment.  
3 Any employer upon application, or pursuant to a general or  
4 special regulation, may be granted an extension of time, not  
5 exceeding three months, for the making of his or her quarterly  
6 contribution and wage reports or for the payment of such  
7 contributions. Payment of contributions due shall be made to the  
8 treasurer designated pursuant to section 288.290.

9 (1) In the payment of any contributions due, a fractional  
10 part of a cent shall be disregarded unless it amounts to one-half  
11 cent or more, in which case it shall be increased to one cent;

12 (2) Contributions shall not be deducted in whole or in part  
13 from the wages of individuals in employment.

14 2. As of June thirtieth of each year, the division shall  
15 establish an average industry contribution rate for the next  
16 succeeding calendar year for each of the industrial  
17 classification divisions listed in the [Standard Industrial  
18 Classification Manual furnished] industrial classification system  
19 established by the federal government. The average industry  
20 contribution rate for each standard industrial classification  
21 division shall be computed by multiplying total taxable wages  
22 paid by each employer in the industrial classification division  
23 during the twelve consecutive months ending on June thirtieth by  
24 the employer's contribution rate established for the next  
25 calendar year and dividing the aggregate product for all

1 employers in the industrial classification division by the total  
2 of taxable wages paid by all employers in the industrial  
3 classification division during the twelve consecutive months  
4 ending on June thirtieth. Each employer will be assigned to [a  
5 standard] an industrial classification code division as  
6 determined by the division in accordance with the definitions  
7 contained in the [Standard Industrial Classification Manual]  
8 industrial classification system established by the federal  
9 government, and shall pay contributions at the average industry  
10 rate established for the preceding calendar year for the  
11 industrial classification division to which it is assigned or two  
12 and seven-tenths percent of taxable wages paid by it, whichever  
13 is the greater, unless there have been at least twelve  
14 consecutive calendar months immediately preceding the calculation  
15 date throughout which its account could have been charged with  
16 benefits. The division shall classify all employers meeting this  
17 chargeability requirement for each calendar year in accordance  
18 with their actual experience in the payment of contributions on  
19 their own behalf and with respect to benefits charged against  
20 their accounts, with a view to fixing such contribution rates as  
21 will reflect such experience. The division shall determine the  
22 contribution rate of each such employer in accordance with  
23 sections 288.113 to 288.126. Notwithstanding the provisions of  
24 this subsection, any employing unit which becomes an employer  
25 pursuant to the provisions of subsection 7 or 8 of section

1       288.034 shall pay contributions equal to one percent of wages  
2       paid by it until its account has been chargeable with benefits  
3       for the period of time sufficient to enable it to qualify for a  
4       computed rate on the same basis as other employers.

5               3. Benefits paid to employees of any governmental entity  
6       and nonprofit organizations shall be financed in accordance with  
7       the provisions of this subsection. For the purpose of this  
8       subsection, a "nonprofit organization" is an organization (or  
9       group of organizations) described in Section 501(c)(3) of the  
10      United States Internal Revenue Code which is exempt from income  
11      tax under Section 501(a) of such code.

12             (1) A governmental entity which, pursuant to subsection 7  
13      of section 288.034, or nonprofit organization which, pursuant to  
14      subsection 8 of section 288.034, is, or becomes, subject to this  
15      law on or after April 27, 1972, shall pay contributions due under  
16      the provisions of subsections 1 and 2 of this section unless it  
17      elects, in accordance with this subdivision, to pay to the  
18      division for the unemployment compensation fund an amount equal  
19      to the amount of regular benefits and of one-half of the extended  
20      benefits paid, that is attributable to service in the employ of  
21      such governmental entity or nonprofit organization, to  
22      individuals for weeks of unemployment which begin during the  
23      effective period of such election; except that, with respect to  
24      benefits paid for weeks of unemployment beginning on or after  
25      January 1, 1979, any such election by a governmental entity shall



1 be to pay to the division for the unemployment compensation fund  
2 an amount equal to the amount of all regular benefits and all  
3 extended benefits paid that is attributable to service in the  
4 employ of such governmental entity.

5 (a) A governmental entity or nonprofit organization which  
6 is, or becomes, subject to this law on or after April 27, 1972,  
7 may elect to become liable for payments in lieu of contributions  
8 for a period of not less than one calendar year, provided it  
9 files with the division a written notice of its election within  
10 the thirty-day period immediately following the date of the  
11 determination of such subjectivity. The provisions of paragraphs  
12 (a) through (e) of subdivision (4) of subsection 1 of section  
13 288.100 shall not apply in the calendar year 1998 and each  
14 calendar year thereafter, in the case of an employer who has  
15 elected to become liable for payments in lieu of contributions.

16 (b) A governmental entity or nonprofit organization which  
17 makes an election in accordance with paragraph (a) of this  
18 subdivision will continue to be liable for payments in lieu of  
19 contributions until it files with the division a written notice  
20 terminating its election not later than thirty days prior to the  
21 beginning of the calendar year for which such termination shall  
22 first be effective.

23 (c) A governmental entity or any nonprofit organization  
24 which has been paying contributions under this law for a period  
25 subsequent to January 1, 1972, may change to a reimbursable basis

1 by filing with the division not later than thirty days prior to  
2 the beginning of any calendar year a written notice of election  
3 to become liable for payments in lieu of contributions. Such  
4 election shall not be terminable by the organization for that and  
5 the next calendar year.

6 (d) The division, in accordance with such regulations as  
7 may be adopted, shall notify each governmental entity or  
8 nonprofit organization of any determination of its status of an  
9 employer and of the effective date of any election which it makes  
10 and of any termination of such election. Such determination  
11 shall be subject to appeal as is provided in subsection 4 of  
12 section 288.130.

13 (2) Payments in lieu of contributions shall be made in  
14 accordance with the provisions of paragraph (a) of this  
15 subdivision, as follows:

16 (a) At the end of each calendar quarter, or at the end of  
17 any other period as determined by the director, the division  
18 shall bill the governmental entity or nonprofit organization (or  
19 group of such organizations) which has elected to make payments  
20 in lieu of contributions for an amount equal to the full amount  
21 of regular benefits plus one-half of the amount of extended  
22 benefits paid during such quarter or other prescribed period that  
23 is attributable to service in the employ of such organization;  
24 except that, with respect to extended benefits paid for weeks of  
25 unemployment beginning on or after January 1, 1979, which are

1     attributable to service in the employ of a governmental entity,  
2     the governmental entity shall be billed for the full amount of  
3     such extended benefits.

4           (b) Payment of any bill rendered under paragraph (a) of  
5     this subdivision shall be due and shall be made not later than  
6     thirty days after such bill was mailed to the last known address  
7     of the governmental entity or nonprofit organization or was  
8     otherwise delivered to it.

9           (c) Payments made by the governmental entity or nonprofit  
10    organization under the provisions of this subsection shall not be  
11    deducted or deductible, in whole or in part, from the  
12    remuneration of individuals in the employ of the organization.

13          (d) Past due payments of amounts in lieu of contributions  
14    shall be subject to the same interest and penalties that apply to  
15    past due contributions. Also, unpaid amounts in lieu of  
16    contributions, interest, penalties and surcharges are subject to  
17    the same assessment, civil action and compromise provisions of  
18    this law as apply to unpaid contributions. Further, the  
19    provisions of this law which provide for the adjustment or refund  
20    of contributions shall apply to the adjustment or refund of  
21    payments in lieu of contributions.

22          (3) If any governmental entity or nonprofit organization  
23    fails to timely file a required quarterly wage report, the  
24    division shall assess such entity or organization a penalty as  
25    provided in subsections 1 and 2 of section 288.160.

1           (4) Except as provided in subsection 4 of this section,  
2 each employer that is liable for payments in lieu of  
3 contributions shall pay to the division for the fund the amount  
4 of regular benefits plus the amount of one-half of extended  
5 benefits paid that are attributable to service in the employ of  
6 such employer; except that, with respect to benefits paid for  
7 weeks of unemployment beginning on or after January 1, 1979, a  
8 governmental entity that is liable for payments in lieu of  
9 contributions shall pay to the division for the fund the amount  
10 of all regular benefits and all extended benefits paid that are  
11 attributable to service in the employ of such employer. If  
12 benefits paid to an individual are based on wages paid by more  
13 than one employer in the base period of the claim, the amount  
14 chargeable to each employer shall be obtained by multiplying the  
15 benefits paid by a ratio obtained by dividing the base period  
16 wages from such employer by the total wages appearing in the base  
17 period.

18           (5) Two or more employers that have become liable for  
19 payments in lieu of contributions, in accordance with the  
20 provisions of subdivision (1) of this subsection, may file a  
21 joint application to the division for the establishment of a  
22 group account for the purpose of sharing the cost of benefits  
23 paid that are attributable to service in the employ of such  
24 employers. Each such application shall identify and authorize a  
25 group representative to act as the group's agent for the purposes

1 of this subdivision. Upon approval of the application, the  
2 division shall establish a group account for such employers  
3 effective as of the beginning of the calendar quarter in which  
4 the application was received and shall notify the group's  
5 representative of the effective date of the account. Such  
6 account shall remain in effect for not less than two years and  
7 thereafter until terminated at the discretion of the director or  
8 upon application by the group. Upon establishment of the  
9 account, each member of the group shall be liable for payments in  
10 lieu of contributions with respect to each calendar quarter in  
11 the amount that bears the same ratio to the total benefits paid  
12 in such quarter that are attributable to service performed in the  
13 employ of all members of the group as the total wages paid for  
14 service in employment by such member in such quarter bears to the  
15 total wages paid during such quarter for service performed in the  
16 employ of all members of the group. The director shall prescribe  
17 such regulations as he or she deems necessary with respect to  
18 applications for establishment, maintenance and termination of  
19 group accounts that are authorized by this subdivision, for  
20 addition of new members to, and withdrawal of active members  
21 from, such accounts, and for the determination of the amounts  
22 that are payable under this subdivision by members of the group  
23 and the time and manner of such payments.

24 4. Any employer which elects to make payments in lieu of  
25 contributions into the unemployment compensation fund as provided

1 in subdivision (1) of subsection 3 of this section shall not be  
2 liable to make such payments with respect to the benefits paid to  
3 any individual whose base period wages include wages for previous  
4 work not classified as insured work as defined in section 288.030  
5 to the extent that the unemployment compensation fund is  
6 reimbursed for such benefits pursuant to Section 121 of Public  
7 Law 94-566.

8 5. Any employer which elects to make payments in lieu of  
9 contributions pursuant to subsection 3 of this section shall be  
10 liable for an additional surcharge to the division for the  
11 unemployment compensation trust fund in an amount equal to the  
12 interest rate on United States treasury bills, averaged for the  
13 previous four calendar quarters, multiplied by the total benefit  
14 payments charged to the employer's account. Governmental  
15 entities except cities, counties and the state of Missouri which  
16 elect to make payments in lieu of contributions pursuant to  
17 subsection 3 of this section shall be liable for an additional  
18 surcharge to the division for the unemployment compensation fund  
19 in an amount equal to one-half of the interest rate on United  
20 States treasury bills, averaged for the previous four calendar  
21 quarters, multiplied by the total benefit payments charged to the  
22 employer's account. The cumulative benefits charged plus the  
23 cumulative surcharges pursuant to this subsection for all  
24 employers electing to make payments in lieu of contributions  
25 shall not exceed the summation of total benefit payments

1 chargeable and not chargeable for the calendar quarter. The  
2 provisions of this subsection shall not be effective after  
3 September 30, 1993.

4 6. Beginning October 1, 1993, through December 31, 1993,  
5 any employer which elects to make payments in lieu of  
6 contributions pursuant to subsection 3 of this section shall be  
7 liable for an additional surcharge to the division for the  
8 unemployment compensation trust fund in an amount equal to the  
9 interest rate of United States treasury bills, averaged for the  
10 previous four calendar quarters, multiplied by the total benefit  
11 payments charged to the employer's account. The cumulative  
12 benefits charged plus the cumulative surcharges pursuant to this  
13 subsection for all employers electing to make payments in lieu of  
14 contributions shall not exceed the summation of total benefit  
15 payments chargeable and not chargeable for the calendar quarter.

16 7. Beginning January 1, 1994, through December 31, 1995,  
17 any employer which elects to make payments in lieu of  
18 contributions pursuant to subsection 3 of this section shall be  
19 liable for an additional surcharge to the division for the  
20 unemployment compensation trust fund. The calendar year  
21 surcharge rate will be the base prime rate on corporate loans  
22 posted by at least seventy-five percent of the nation's thirty  
23 largest banks as of November thirtieth of the preceding year.  
24 The additional surcharge will be the surcharge rate multiplied by  
25 the total benefit payments charged to the employer's account.

1 The cumulative benefits charged plus the cumulative surcharges  
2 pursuant to this subsection for all employers electing to make  
3 payments in lieu of contributions shall not exceed the summation  
4 of total benefit payments chargeable and not chargeable for the  
5 calendar quarter.

6 8. Beginning January 1, 1996, through December 31, 1996,  
7 any employer which elects to make payments in lieu of  
8 contributions pursuant to subsection 3 of this section shall be  
9 liable for the total benefit payments chargeable to its account  
10 pursuant to the provisions of section 288.100 plus one-third of  
11 the total benefit payments not charged to its account pursuant to  
12 paragraphs (a) through (e) of subdivision (4) of subsection 1 of  
13 section 288.100. The remaining two-thirds of the benefit  
14 payments not charged to its account pursuant to paragraphs (a)  
15 through (e) of subdivision (4) of subsection 1 of section 288.100  
16 shall be paid by the unemployment compensation trust fund.

17 9. Beginning January 1, 1997, through December 31, 1997,  
18 any employer which elects to make payments in lieu of  
19 contributions pursuant to subsection 3 of this section shall be  
20 liable for the total benefit payments chargeable to its account  
21 pursuant to the provisions of section 288.100 plus two-thirds of  
22 the total benefit payments not charged to its account pursuant to  
23 paragraphs (a) through (e) of subdivision (4) of subsection 1 of  
24 section 288.100. The remaining one-third of the benefit payments  
25 not charged to its account pursuant to paragraphs (a) through (e)



1 of subdivision (4) of subsection 1 of section 288.100 shall be  
2 paid by the unemployment compensation trust fund.

3 10. Beginning January 1, 1998, and each calendar year  
4 thereafter, any employer which elects to make payments in lieu of  
5 contributions pursuant to subsection 3 of this section shall be  
6 liable for all benefit payments and shall not have charges  
7 relieved pursuant to the provisions of paragraphs (a) through (e)  
8 of subdivision (4) of subsection 1 of section 288.100.

9 11. (1) For the purposes of this chapter, a common  
10 paymaster arrangement will not exist unless approval has been  
11 obtained from the division. To receive a division-approved  
12 common paymaster arrangement, the related corporation designated  
13 to be the common paymaster for the related corporations must  
14 notify the division in writing at least thirty days prior to the  
15 beginning of the quarter in which the common paymaster reporting  
16 is to be effective. The common paymaster shall furnish the name  
17 and account number of each corporation in the related group that  
18 will be utilizing the one corporation as the common paymaster.  
19 The common paymaster shall also notify the division at least  
20 thirty days prior to any change in the related group of  
21 corporations or termination of the common paymaster arrangement.  
22 The common paymaster shall be responsible for keeping books and  
23 records for the payroll with respect to its own employees and the  
24 concurrently employed individuals of the related corporations.  
25 In order for remuneration to be eligible for the provisions

1 applicable to a common paymaster, the individuals must be  
2 concurrently employed and the remuneration must be disbursed  
3 through the common paymaster. The common paymaster shall have  
4 the primary responsibility for remitting all required quarterly  
5 contribution and wage reports, contributions due with respect to  
6 the remuneration it disburses as the common paymaster and/or  
7 payments in lieu of contributions. The common paymaster shall  
8 compute the contributions due as though it were the sole employer  
9 of the concurrently employed individuals. If the common  
10 paymaster fails to remit the quarterly contribution and wage  
11 reports, contributions due and/or payments in lieu of  
12 contributions, in whole or in part, it shall remain liable for  
13 submitting the quarterly contribution and wage reports and the  
14 full amount of the unpaid portion of the contributions due and/or  
15 payments in lieu of contributions. In addition, each of the  
16 related corporations using the common paymaster shall be jointly  
17 and severally liable for submitting quarterly contribution and  
18 wage reports, its share of the contributions due and/or payments  
19 in lieu of contributions, penalties, interest and surcharges  
20 which are not submitted and/or paid by the common paymaster. All  
21 contributions due, payments in lieu of contributions, penalties,  
22 interest and surcharges which are not timely paid to the division  
23 under a common paymaster arrangement shall be subject to the  
24 collection provisions of this chapter.

25 (2) For the purposes of this subsection, "concurrent

1 employment" means the simultaneous existence of an employment  
2 relationship between an individual and two or more related  
3 corporations for any calendar quarter in which employees are  
4 compensated through a common paymaster which is one of the  
5 related corporations, those corporations shall be considered one  
6 employing unit and be subject to the provisions of this chapter.

7 (3) For the purposes of this subsection, "related  
8 corporations" means that corporations shall be considered related  
9 corporations for an entire calendar quarter if they satisfy any  
10 one of the following tests at any time during the calendar  
11 quarter:

12 (a) The corporations are members of a "controlled group of  
13 corporations". The term "controlled group of corporations"  
14 means:

15 a. Two or more corporations connected through stock  
16 ownership with a common parent corporation, if the parent  
17 corporation owns stock possessing at least fifty percent of the  
18 total combined voting power of all classes of stock entitled to  
19 vote or at least fifty percent of the total value of shares of  
20 all classes of stock of each of the other corporations; or

21 b. Two or more corporations, if five or less persons who  
22 are individuals, estates or trusts own stock possessing at least  
23 fifty percent of the total combined voting power of all classes  
24 of stock entitled to vote or at least fifty percent of the total  
25 value of shares of all classes of stock of each of the other

1 corporations; or

2 (b) In the case of corporations which do not issue stock,  
3 at least fifty percent of the members of one corporation's board  
4 of directors are members of the board of directors of the other  
5 corporations; or

6 (c) At least fifty percent of one corporation's officers  
7 are concurrently officers of the other corporations; or

8 (d) At least thirty percent of one corporation's employees  
9 are concurrently employees of the other corporations.

10 288.110. Any individual, type of organization or employing  
11 unit which has acquired substantially all of the business of an  
12 employer, excepting in any such case any assets retained by such  
13 employer incident to the liquidation of his obligations, and in  
14 respect to which the division finds that immediately after such  
15 change such business of the predecessor employer is continued  
16 without interruption solely by the successor, shall stand in the  
17 position of such predecessor employer in all respects, including  
18 the predecessor's separate account, actual contribution and  
19 benefit experience, annual payrolls, and liability for current or  
20 delinquent contributions, interest and penalties. If two or more  
21 individuals, organizations, or employing units acquired at  
22 approximately the same time substantially all of the business of  
23 an employer (excepting in any such case any assets retained by  
24 such employer incident to the liquidation of his obligations) and  
25 in respect to which the division finds that immediately after

1 such change all portions of such business of the predecessor are  
2 continued without interruption solely by such successors, each  
3 such individual, organization, or employing unit shall stand in  
4 the position of such predecessor with respect to the  
5 proportionate share of the predecessor's separate account, actual  
6 contribution and benefit experience and annual payroll as  
7 determined by the portion of the predecessor's taxable payroll  
8 applicable to the portion of the business acquired, and each such  
9 individual, organization or employing unit shall be liable for  
10 current or delinquent contributions, interest and penalties of  
11 the predecessor in the same relative proportion. Further, any  
12 successor under this section which was not an employer at the  
13 time the acquisition occurred, shall pay contributions for the  
14 balance of the current rate year at the same contribution rate as  
15 the contribution rate of the predecessor whether such rate is  
16 more or less than two and seven-tenths percent, provided there  
17 was only one predecessor or there were only predecessors with  
18 identical rates. If the predecessors' rates were not identical,  
19 the division shall calculate a rate as of the date of acquisition  
20 applicable to the successor for the remainder of the rate year,  
21 which rate shall be based on the combined experience of all  
22 predecessor employers. In the event that any successor was,  
23 prior to an acquisition, an employer, and there is a difference  
24 in the contribution rate established for such calendar year  
25 applicable to any acquired or acquiring employer, the division

1 shall make a recalculation [as of the date of acquisition] of the  
2 contribution rate applicable to any successor employer based upon  
3 the combined experience of all predecessor and successor  
4 employers[, which] as of the date of the acquisition, unless the  
5 date of the acquisition is other than the first day of the  
6 calendar quarter. If the date of any such acquisition is other  
7 than the first day of the calendar quarter, the division shall  
8 make the recalculation of the rate on the first day of the next  
9 calendar quarter after the acquisition. When the date of the  
10 acquisition is other than the first day of a calendar quarter,  
11 the successor employer shall use its rate for the calendar  
12 quarter in which the acquisition was made. The revised  
13 contribution rate shall apply to employment after the [date of  
14 any such acquisition] rate recalculation. For this purpose a  
15 calculation date different from July first may be established.  
16 When the division has determined that a successor or successors  
17 stand in the position of a predecessor employer, the  
18 predecessor's liability shall be terminated as of the date of the  
19 acquisition.

20 288.120. 1. On each June thirtieth, or within a reasonable  
21 time thereafter as may be fixed by regulation, the balance of an  
22 employer's experience rating account, except an employer  
23 participating in a shared work plan under section 288.500, shall  
24 determine his contribution rate for the following calendar year  
25 as determined by the following table:

1	Percentage the Employer's Experience Rating		
2	Account is to that Employer's Average Annual Payroll		
3	Equals or Exceeds	Less Than	Contribution Rate
4	-----	-12.0	6.0%
5	-12.0	-11.0	5.8%
6	-11.0	-10.0	5.6%
7	-10.0	-9.0	5.4%
8	-9.0	-8.0	5.2%
9	-8.0	-7.0	5.0%
10	-7.0	-6.0	4.8%
11	-6.0	-5.0	4.6%
12	-5.0	-4.0	4.4%
13	-4.0	-3.0	4.2%
14	-3.0	-2.0	4.0%
15	-2.0	-1.0	3.8%
16	-1.0	0	3.6%
17	0	2.5	2.7%
18	2.5	3.5	2.6%
19	3.5	4.5	2.5%
20	4.5	5.0	2.4%
21	5.0	5.5	2.3%
22	5.5	6.0	2.2%
23	6.0	6.5	2.1%
24	6.5	7.0	2.0%

1	7.0	7.5	1.9%
2	7.5	8.0	1.8%
3	8.0	8.5	1.7%
4	8.5	9.0	1.6%
5	9.0	9.5	1.5%
6	9.5	10.0	1.4%
7	10.0	10.5	1.3%
8	10.5	11.0	1.2%
9	11.0	11.5	1.1%
10	11.5	12.0	1.0%
11	12.0	12.5	0.9%
12	12.5	13.0	0.8%
13	13.0	13.5	0.6%
14	13.5	14.0	0.4%
15	14.0	14.5	0.3%
16	14.5	15.0	0.2%
17	15.0	---	0.0%

18           2. Using the same mathematical principles used in  
 19 constructing the table provided in subsection 1 of this section,  
 20 the following table has been constructed. The contribution rate  
 21 for the following calendar year of any employer participating in  
 22 a shared work plan under section 288.500 during the current  
 23 calendar year or any calendar year during a prior three-year  
 24 period shall be determined from the balance in such employer's



experience rating account as of the previous June thirtieth, or within a reasonable time thereafter as may be fixed by regulation, from the following table:

Percentage the Employer's Experience Rating Account is to that Employer's Average Annual Payroll		
Equals or Exceeds	Less Than	Contribution Rate
-----	-27.0	9.0%
-27.0	-26.0	8.8%
-26.0	-25.0	8.6%
-25.0	-24.0	8.4%
-24.0	-23.0	8.2%
-23.0	-22.0	8.0%
-22.0	-21.0	7.8%
-21.0	-20.0	7.6%
-20.0	-19.0	7.4%
-19.0	-18.0	7.2%
-18.0	-17.0	7.0%
-17.0	-16.0	6.8%
-16.0	-15.0	6.6%
-15.0	-14.0	6.4%
-14.0	-13.0	6.2%
-13.0	-12.0	6.0%
-12.0	-11.0	5.8%
-11.0	-10.0	5.6%
-10.0	-9.0	5.4%

1	-9.0	-8.0	5.2%
2	-8.0	-7.0	5.0%
3	-7.0	-6.0	4.8%
4	-6.0	-5.0	4.6%
5	-5.0	-4.0	4.4%
6	-4.0	-3.0	4.2%
7	-3.0	-2.0	4.0%
8	-2.0	-1.0	3.8%
9	-1.0	0	3.6%
10	0	2.5	2.7%
11	2.5	3.5	2.6%
12	3.5	4.5	2.5%
13	4.5	5.0	2.4%
14	5.0	5.5	2.3%
15	5.5	6.0	2.2%
16	6.0	6.5	2.1%
17	6.5	7.0	2.0%
18	7.0	7.5	1.9%
19	7.5	8.0	1.8%
20	8.0	8.5	1.7%
21	8.5	9.0	1.6%
22	9.0	9.5	1.5%
23	9.5	10.0	1.4%
24	10.0	10.5	1.3%
25	10.5	11.0	1.2%

1	11.0	11.5	1.1%
2	11.5	12.0	1.0%
3	12.0	12.5	0.9%
4	12.5	13.0	0.8%
5	13.0	13.5	0.6%
6	13.5	14.0	0.4%
7	14.0	14.5	0.3%
8	14.5	15.0	0.2%
9	15.0	----	0.0%

3. Notwithstanding the provisions of subsection 2 of section 288.090, any employer participating in a shared work plan under section 288.500, who has not had at least twelve calendar months immediately preceding the calculation date throughout which his account could have been charged with benefits shall have a contribution rate equal to the highest contribution rate in the table in subsection 2 of this section, until such time as his account has been chargeable with benefits for the period of time sufficient to enable him to qualify for a computed rate on the same basis as other employers participating in shared work plans.

4. For each second and subsequent year an employer's experience rating exceeds less than a minus twelve percentage as compared to that employer's average annual payroll, the contribution rate will be assessed an additional one-quarter percent, until the contribution rate equals seven percent, at

1 which point in the subsequent year it will be assessed an  
2 additional one-half percent, but at no point shall any  
3 contribution rate exceed seven and one-half percent.

4 288.121. 1. On October first of each calendar year, if the  
5 average balance, less any federal advances, of the unemployment  
6 compensation trust fund of the four preceding quarters (September  
7 thirtieth, June thirtieth, March thirty-first and December  
8 thirty-first of the preceding calendar year) is less than four  
9 hundred fifty million dollars, then each employer's contribution  
10 rate calculated for the four calendar quarters of the succeeding  
11 calendar year shall be increased by the percentage determined  
12 from the following table:

Balance in Trust Fund				Percentage of Increase
Less Than	Equals or Exceeds			
16	[\$400,000,000]	<u>\$450,000,000</u>	17 [\$350,000,000]	<u>\$400,000,000</u> 10%
17	[\$350,000,000]	<u>\$400,000,000</u>	18 [\$300,000,000]	<u>\$350,000,000</u> 20%
18	[\$300,000,000]	<u>\$350,000,000</u>		30%

19 [Notwithstanding the table in this section, each employer's  
20 contribution rate calculated for the four calendar quarters of  
21 calendar year 1994 shall be increased by forty percent, instead  
22 of thirty percent, as previously indicated in the table in this  
23 section. After the forty percent increase, each employer's  
24 contribution rate for the four calendar quarters of calendar year

1 1994 shall be increased by adding three-tenths of one percent.]

2 For calendar years 2005, 2006, and 2007, the contribution rate of  
3 any employer who is paying the maximum contribution rate shall be  
4 increased by forty percent, instead of thirty percent as  
5 previously indicated in the table in this section.

6 2. For calendar years 2005 and 2006, an employer's total  
7 contribution rate for those employers maintaining a positive  
8 experience rating shall equal the employer's contribution rate  
9 plus a temporary solvency charge of one-tenth of one percent  
10 added to the contribution rate plus the increase authorized under  
11 subsection 1 of this section. For calendar years 2005 and 2006,  
12 an employer's total contribution rate for those employers  
13 maintaining a negative experience rating shall equal the  
14 employer's contribution rate plus a temporary solvency charge of  
15 two-tenths of one percent added to the contribution rate plus the  
16 increase authorized under subsection 1 of this section. The  
17 temporary solvency charge shall expire upon the last day of the  
18 fourth calendar quarter of 2006.

19 288.122. On October first of each calendar year, if the  
20 average balance, less any federal advances, of the unemployment  
21 compensation trust fund of the four preceding quarters (September  
22 thirtieth, June thirtieth, March thirty-first and December  
23 thirty-first of the preceding calendar year) is more than five  
24 hundred million dollars, then each employer's contribution rate  
25 calculated for the four calendar quarters of the succeeding

1 calendar year shall be decreased by the percentage determined  
2 from the following table:

Balance in Trust Fund		Percentage of Decrease
More Than	But Less Than	
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24		
[\$500,000,000	\$600,000,000]	
<u>\$600,000,000</u>	<u>\$750,000,000</u>	7%
[\$600,000,000]		
<u>\$750,000,000</u>		12%

10 Notwithstanding the table in this section, if the balance in the  
11 unemployment insurance compensation trust fund as calculated in  
12 this section is more than [six] seven hundred fifty million  
13 dollars, the percentage of decrease of the employer's  
14 contribution rate calculated for the four calendar quarters of  
15 the succeeding calendar year shall be no greater than ten percent  
16 for any employer whose calculated contribution rate under section  
17 288.120 is six percent or greater.

18 288.128. 1. In addition to all other contributions due  
19 under this chapter, if the fund is utilizing moneys advanced by  
20 the federal government under the provisions of 42 U.S.C.A.,  
21 section 1321 pursuant to section 288.330, or if the fund is not  
22 utilizing moneys advanced by the federal government, then from  
23 the proceeds of credit instruments issued under section 288.330,  
24 or from the moneys advanced under financial agreements under

1 subdivision (16) of subsection 2 of section 288.330, or a  
2 combination of credit instruments proceeds and moneys advanced  
3 under financial agreements, each employer shall be assessed an  
4 amount solely for the payment of interest due on such federal  
5 advancements, or if the fund is not utilizing moneys advanced by  
6 the federal government, or in the case of issuance of credit  
7 instruments for the payment of the principal, interest, and  
8 administrative expenses related to such credit instruments, or in  
9 the case of financial agreements for the payment of principal,  
10 interest, and administrative expenses related to such financial  
11 agreements, or in the case of a combination of credit instruments  
12 and financial agreements for the payment of principal, interest,  
13 and administrative expenses for both. The rate shall be  
14 determined by dividing the interest due on federal advancements  
15 or if the fund is not utilizing moneys advanced by the federal  
16 government, then the principal, interest, and administrative  
17 expenses related to credit instruments, or the principal,  
18 interest, and administrative expenses related to financial  
19 agreements under subdivision (16) of subsection 2 of section  
20 288.330, or the principal, interest, and administrative expenses  
21 related to a combination of credit instruments and financial  
22 agreements by ninety-five percent of the total taxable wages paid  
23 by all Missouri employers in the preceding calendar year. Each  
24 employer's proportionate share shall be the product obtained by  
25 multiplying such employer's total taxable wages for the preceding

1 calendar year by the rate specified in this section. Each  
2 employer shall be notified of the amount due under this section  
3 by June thirtieth of each year and such amount shall be  
4 considered delinquent thirty days thereafter. The moneys  
5 collected from each employer for the payment of interest due on  
6 federal advances, or if the fund is not utilizing moneys advanced  
7 by the federal government, then the payment of principal,  
8 interest, and administrative expenses related to credit  
9 instruments, or the payment of the principal, interest, and  
10 administrative expenses related to financial agreements under  
11 subdivision (16) of subsection 2 of section 288.330, or the  
12 payment of the principal, interest, and administrative expenses  
13 related to a combination of credit instruments and financial  
14 agreements, shall be deposited in the special employment security  
15 fund.

16 2. If on December thirty-first of any year the money  
17 collected under this section exceeds the amount of interest due  
18 on federal advancements by one hundred thousand dollars or more,  
19 then each employer's experience rating account shall be credited  
20 with an amount which bears the same ratio to the excess moneys  
21 collected under this section as that employer's payment collected  
22 under this section bears to the total amount collected under this  
23 section. Further, if on December thirty-first of any year the  
24 moneys collected under this section exceed the amount of interest  
25 due on the federal advancements by less than one hundred thousand



1 dollars, the balance shall be transferred from the special  
2 employment security fund to the Secretary of the Treasury of the  
3 United States to be credited to the account of this state in the  
4 unemployment trust fund.

5 288.175. 1. Notwithstanding any other provisions to the  
6 contrary, the division may collect any debt by interception of  
7 the debtor's federal income tax refund, in the manner and to the  
8 extent allowed by federal law.

9 2. "Debt" shall mean any established overpayment or sum  
10 past due that is legally owed and enforceable under the Missouri  
11 employment security law, which has accrued through contract or  
12 operation of law and which has become final under state law and  
13 remains uncollected.

14 3. "Debtor" shall mean any individual, sole proprietorship,  
15 partnership, corporation, limited liability company, or other  
16 legal entity owing a debt.

17 288.190. 1. The director shall designate an impartial  
18 referee or referees to hear and decide disputed determinations,  
19 claims referred pursuant to subsection 2 of section 288.070, and  
20 petitions for reassessment. No employee of the division shall  
21 participate on behalf of the division in any case in which the  
22 division employee is an interested party.

23 2. The manner in which disputed determinations, referred  
24 claims, and petitions for reassessment shall be presented and the  
25 conduct of hearings shall be in accordance with regulations

1 prescribed by the division for determining the rights of the  
2 parties, whether or not such regulations conform to common law or  
3 statutory rules of evidence and other technical rules of  
4 procedure. When the same or substantially similar evidence is  
5 relevant and material to the matters in issue in claims by more  
6 than one individual or in claims by a single individual in  
7 respect to two or more weeks of unemployment, the same time and  
8 place for considering each such claim or claims may be fixed,  
9 hearings thereon jointly conducted, a single record of the  
10 proceedings made, and evidence introduced with respect to one  
11 proceeding considered as introduced in the others, if in the  
12 judgment of the appeals tribunal or the commission having  
13 jurisdiction of the proceeding such consolidation would not be  
14 prejudicial to any party. A full and complete record shall be  
15 kept of all proceedings in connection with a disputed  
16 determination, referred claim, or petition for reassessment. The  
17 appeals tribunal shall include in the record and consider as  
18 evidence all records of the division that are material to the  
19 issues. All testimony at any hearing shall be recorded but need  
20 not be transcribed unless the matter is further appealed.

21 3. Unless an appeal on a disputed determination or referred  
22 claim is withdrawn, an appeals tribunal, after affording the  
23 parties reasonable opportunity for fair hearing, shall affirm,  
24 modify, or reverse the determination of the deputy, or shall  
25 remand the matter to the deputy with directions. In addition, in

1 any case wherein the appellant, after having been duly notified  
2 of the date, time, and place of the hearing, shall fail to appear  
3 at such hearing, the appeals tribunal may enter an order  
4 dismissing the appeal. The director may transfer to another  
5 appeals tribunal the proceedings on an appeal determination  
6 before an appeals tribunal. The parties shall be duly notified  
7 of an appeals tribunal's decision or order, together with its  
8 reason therefor, which shall be deemed to be the final decision  
9 or order of the division unless, within thirty days after the  
10 date of notification or mailing of such decision, further appeal  
11 is initiated pursuant to section 288.200; except that, within  
12 thirty days of either notification or mailing of the appeals  
13 tribunal's decision or order, the appeals tribunal, on its own  
14 motion, may reconsider any decision or order when it appears that  
15 such reconsideration is essential to the accomplishment of the  
16 object and purpose of this law.

17 4. Unless a petition for reassessment is withdrawn or is  
18 allowed without a hearing, the petitioners shall be given a  
19 reasonable opportunity for a fair hearing before an appeals  
20 tribunal upon each such petition. The appeals tribunal shall  
21 promptly notify the interested parties of its decision upon such  
22 petition together with its reason therefor. In addition, in any  
23 case wherein the appellant, after having been duly notified of  
24 the date, time, and place of the hearing, shall fail to appear at  
25 such hearing, the appeals tribunal may enter an order dismissing

1 the appeal. In the absence of the filing of an application for  
2 review of such decision, the decision, whether it results in a  
3 reassessment or otherwise, shall become final thirty days after  
4 the date of notification or mailing thereof; except that, within  
5 thirty days of either notification or mailing of the appeals  
6 tribunal's decision or order, the appeals tribunal, on its own  
7 motion, may reconsider any decision or order when it appears that  
8 such reconsideration is essential to the accomplishment of the  
9 object and purposes of this law.

10 5. Any party subject to any decision of an appeals tribunal  
11 pursuant to this chapter has a right to counsel, the right to  
12 designate a representative, including but not limited to a  
13 certified public accountant or human resource professional to  
14 represent the party at any hearing, and shall be notified prior  
15 to a hearing conducted pursuant to this chapter that a decision  
16 of the appeals tribunal is presumptively conclusive for the  
17 purposes of this chapter as provided in section 288.200.

18 288.290. 1. There is hereby established as a special fund,  
19 separate and apart from all public moneys or funds of this state,  
20 an "Unemployment Compensation Fund", which shall be administered  
21 by the division exclusively for the purposes of this law. This  
22 fund shall consist of:

23 (1) All contributions and payments in lieu of contributions  
24 collected under this law;

25 (2) Interest earned upon any moneys in the fund;

1           (3) Any property or securities acquired through the use of  
2 moneys belonging to the fund;

3           (4) All earnings of such property or securities;

4           (5) All voluntary contributions permitted under the law;  
5 and

6           (6) All funds set aside or appropriated by the Congress of  
7 the United States or any federal agency, to be deposited to the  
8 fund. All moneys in the funds shall be mingled and undivided,  
9 except that all money credited to this state's account in the  
10 Unemployment Trust Fund pursuant to Section 903 of the Social  
11 Security Act, as amended, and which has been appropriated for  
12 expenses of administration, shall be used only for the purposes  
13 set out in subsection 5 of this section and shall not be included  
14 in the cash balance in the unemployment compensation fund for the  
15 purposes of sections 288.100 and 288.113 to 288.126.

16           2. The director shall designate a treasurer and custodian  
17 of the fund and he or she shall administer the fund and shall  
18 issue his or her warrants upon it in accordance with such  
19 regulations as the director shall prescribe. He or she shall  
20 maintain within the fund three separate accounts:

21           (1) A clearing account;

22           (2) An unemployment trust fund account; and

23           (3) A benefit account.

24           To ensure that unemployment compensation trust fund moneys are

1 not diverted and are utilized only for the purposes authorized no  
2 other fund shall be established with increased employer taxes  
3 that are offset by a reduction of unemployment contributions.

4         3. All moneys payable to the fund, upon their receipt by  
5 the division, shall immediately be deposited in the clearing  
6 account. Refunds of contributions or payments made necessary  
7 under the provisions of sections 288.140 and 288.340 may be paid  
8 from the clearing account or the benefit account. After  
9 clearance, all moneys in the clearing account shall be  
10 immediately deposited with the Secretary of the Treasury of the  
11 United States of America to the credit of the account of this  
12 state in the Unemployment Trust Fund, established and maintained  
13 pursuant to Section 904 of the Social Security Act, as amended,  
14 any provisions of law in this state relating to the deposit,  
15 administration, release, or disbursement of state moneys in the  
16 possession or custody of the state treasurer to the contrary  
17 notwithstanding. The benefit account shall consist of all moneys  
18 requisitioned from the Missouri account in the federal  
19 Unemployment Trust Fund. Except as otherwise provided, moneys in  
20 the clearing and benefit accounts may be deposited in any bank or  
21 public depository in which general funds of the state may be  
22 deposited, but no public deposit insurance charge or premium  
23 shall be paid out of the fund. Moneys in the clearing and  
24 benefit accounts shall not be commingled with other state funds  
25 but shall be maintained in separate accounts on the books of the

1       depository bank. All funds required by this law to be deposited  
2       in any state depository shall be secured by such depository to  
3       the same extent and in the same manner as is or may hereafter be  
4       required by section 30.270, RSMo, and all the amendments thereto;  
5       provided, that the division shall do those acts directed to be  
6       done by the governor, attorney general and state treasurer, or  
7       any of them, under section 30.270, RSMo, which are not  
8       inconsistent with the other provisions of this law. Collateral  
9       pledged for this purpose shall be kept separate and distinct from  
10      any collateral pledged to secure other funds of the state, or, if  
11      combined, shall be first used to satisfy and make whole the  
12      accounts herein established. The treasurer shall give a separate  
13      bond conditioned upon the faithful performance of his or her  
14      duties as custodian of the fund in an amount not to exceed  
15      twenty-five thousand dollars and in the form prescribed by law or  
16      approved by the attorney general. Premiums for such bonds shall  
17      be paid from the administration fund. All sums recovered for  
18      losses sustained by the fund shall be deposited therein.

19           4. Moneys shall be requisitioned from the Missouri account  
20      in the federal Unemployment Trust Fund solely for the payment of  
21      benefits or for refunds of contributions or payments in lieu of  
22      contributions in accordance with regulations prescribed by the  
23      director, except that money credited to this state's account  
24      pursuant to Section 903 of the Social Security Act, as amended,  
25      shall be used exclusively as provided in subsection 5 of this

1 section. The director shall from time to time requisition from  
2 the federal Unemployment Trust Fund such amounts, not exceeding  
3 the amounts standing to the Missouri account therein, as he or  
4 she deems necessary for the payment of benefits and refunds for a  
5 reasonable future period. Upon its receipt the treasurer shall  
6 deposit such money in the benefit account and shall issue his or  
7 her warrants for the payment of benefits solely from such benefit  
8 account. Expenditures of such moneys in the benefit account and  
9 refunds from the clearing account shall not be subject to any  
10 provisions of law requiring specific appropriations or other  
11 formal release by state officers of moneys belonging to this  
12 state in their custody. All warrants issued by the treasurer for  
13 the payment of benefits and refunds shall bear the signature of  
14 the treasurer and the countersignature of the director or other  
15 duly authorized division representative. Any balance of moneys  
16 requisitioned from the federal Unemployment Trust Fund which  
17 remains unclaimed or unpaid in the benefit account after the  
18 expiration of the period for which such sums were requisitioned  
19 shall either be deducted from estimates for, and may be utilized  
20 for the payment of, benefits during succeeding periods, or, in  
21 the discretion of the director, shall be redeposited with the  
22 Secretary of the Treasury of the United States of America to the  
23 credit of the Missouri account in the federal Unemployment Trust  
24 Fund as provided in subsection 3 of this section.

25 5. (1) Money credited to the account of this state in the



1       Unemployment Trust Fund by the Secretary of the Treasury of the  
2       United States of America pursuant to Section 903 of the Social  
3       Security Act, as amended, may be requisitioned and used for the  
4       payment of expenses incurred for the administration of this law  
5       pursuant to a specific appropriation by the legislature, provided  
6       that the expenses are incurred and the money is requisitioned as  
7       needed after the enactment of an appropriation law which:

8           (a)   Specifies the purpose for which such money is  
9       appropriated and the amounts appropriated therefor;

10          (b)   Limits the period within which such money may be  
11       obligated to a period ending not more than two years after the  
12       date of the enactment of the appropriation law; and

13          (c)   Limits the amount which may be obligated during a  
14       twelve-month period beginning on July first and ending on the  
15       next June thirtieth to an amount which does not exceed the amount  
16       by which the aggregate of the amount transferred to the account  
17       of this state in the Unemployment Trust Fund pursuant to  
18       subsections (a) and (b) of Section 903 of the Social Security  
19       Act, as amended, exceeds the aggregate of the amounts used by  
20       this state pursuant to this subsection and charged against the  
21       amounts transferred to the account of this state in the  
22       Unemployment Trust Fund.

23          (2)   The use of the money referred to in subdivision (1) of  
24       this subsection shall be accounted for in accordance with  
25       standards established by the Secretary of Labor.

1           (3) For purposes of subdivision (1) of this subsection,  
2 amounts used by this state for administration shall be chargeable  
3 against transferred amounts at the exact time the obligation is  
4 entered into.

5           (4) Money credited to the account of this state pursuant to  
6 Section 903 of the Social Security Act, as amended, may not be  
7 withdrawn or used except for the payment of benefits and for the  
8 payment of expenses for the administration of this law and of  
9 public employment offices pursuant to this subsection.

10          (5) Money appropriated as provided under subdivision (1) of  
11 this subsection for the payment of expenses of administration  
12 shall be requisitioned as needed for the payment of obligations  
13 incurred under such appropriation and, upon requisition, shall be  
14 deposited in the unemployment compensation administration fund  
15 from which such payments shall be made. Money so deposited  
16 shall, until expended, remain a part of the unemployment  
17 compensation fund and, if it will not be expended, shall be  
18 returned promptly to the account of this state in the  
19 Unemployment Trust Fund.

20          (6) Money credited to the account of the state in the  
21 federal Unemployment Trust Fund by the Secretary of the Treasury  
22 of the United States of America pursuant to Title 42, Section 903  
23 of the Social Security Act with respect to the federal fiscal  
24 years 1999, 2000 and 2001, shall be used solely for the  
25 administration of the unemployment compensation program.

1           6. The provisions of subsections 1, 2, 3, 4, and 5 of this  
2 section, to the extent that they relate to the federal  
3 Unemployment Trust Fund, shall be operative only so long as such  
4 federal Unemployment Trust Fund continues to exist and so long as  
5 the Secretary of the Treasury of the United States of America  
6 continues to maintain a separate book account of all funds  
7 deposited therein by contributions from employers of this state  
8 for benefit purposes, and by money credited pursuant to Section  
9 903 of the Social Security Act, as amended, together with a  
10 proportionate share of the earnings apportioned to the Missouri  
11 account of such federal Unemployment Trust Fund, from which no  
12 other state is permitted to make or authorize withdrawals. If  
13 and when such Unemployment Trust Fund ceases to exist, or such  
14 separate book account is no longer maintained, all moneys,  
15 properties, or securities therein belonging to the unemployment  
16 compensation fund of this state shall be transferred to the  
17 treasurer of the unemployment compensation fund, who shall hold,  
18 invest, transfer, sell, deposit, and release such moneys,  
19 properties or securities in a manner approved by the director in  
20 accordance with the provisions of this law; provided, that such  
21 moneys shall be invested in the following readily marketable  
22 classes of securities: bonds or other interest-bearing  
23 obligations of the United States of America, or securities on  
24 which the payment of principal and interest are guaranteed by the  
25 United States of America, and bonds or other interest-bearing

1 obligations of the state of Missouri; and provided, further, that  
2 such investments shall at all times be so made that all the  
3 assets of the fund shall always be readily convertible into cash  
4 when needed for the payment of benefits. The treasurer shall  
5 dispose of securities or other properties belonging to the  
6 unemployment compensation fund only under the direction of the  
7 director.

8 7. Notwithstanding any other provision of this law, any  
9 interest or penalties found to have been erroneously collected  
10 and which is ordered to be refunded shall, if paid into the  
11 unemployment compensation fund, be refunded out of the  
12 unemployment compensation fund and, if paid into the special  
13 employment security fund, shall be refunded out of the special  
14 employment security fund; except that, in the event any interest  
15 and penalties paid into the unemployment compensation fund shall  
16 be transferred to the special employment security fund, the  
17 refund of any such interest and penalties shall be made from the  
18 special employment security fund.

19 288.310. 1. There is hereby created in the state treasury  
20 a special fund to be known as the "Special Employment Security  
21 Fund". All interest and penalties collected under the provisions  
22 of this law, including moneys collected pursuant to section  
23 288.128 for the payment of interest due on federal advances  
24 received pursuant to section 288.330, or if the fund is not  
25 utilizing moneys advanced by the federal government, then the

1 payment of principal, interest, and administrative expenses  
2 related to credit instruments issued under section 288.330, or  
3 the payment of the principal, interest, and administrative  
4 expenses related to financial agreements under subdivision (16)  
5 of subsection 2 of section 288.330, or the payment of the  
6 principal, interest, and administrative expenses related to a  
7 combination of credit instruments and financial agreements shall  
8 be paid into this fund. The moneys collected pursuant to section  
9 288.128 shall be used [exclusively] for the payment of interest  
10 due on federal advances received pursuant to section 288.330, or  
11 if the fund is not utilizing moneys advanced by the federal  
12 government, then the payment of principal, interest, and  
13 administrative expenses related to credit instruments issued  
14 under that section, or the payment of principal, interest, and  
15 administrative expenses related to financial agreements under  
16 subdivision (16) of subsection 2 of section 288.330, or the  
17 payment of the principal, interest, and administrative expenses  
18 related to a combination of credit instruments and financial  
19 agreements. Such moneys, except for moneys collected pursuant to  
20 section 288.128, shall not be expended or available for  
21 expenditure in any manner which would permit their substitution  
22 for, or a corresponding reduction in, federal funds which would  
23 in the absence of such money be available to finance expenditures  
24 for the administration of the employment security law, but  
25 nothing in this section shall prevent such moneys, except for

1        moneys collected pursuant to section 288.128, from being used as  
2        a revolving fund, to cover expenditures, necessary and proper  
3        under the law, for which federal funds have been duly requested  
4        but not yet received, subject to the charging of such  
5        expenditures against such funds when received. Subject to the  
6        approval of the director of the department of labor and  
7        industrial relations, the moneys in this fund, except for moneys  
8        collected pursuant to section 288.128, shall be used by the  
9        department of labor and industrial relations for the payment of  
10       costs of administration which are found not to have been properly  
11       and validly chargeable against federal grants or other funds  
12       received for or in the unemployment compensation administration  
13       fund. Such moneys, except for moneys collected pursuant to  
14       section 288.128, shall be available either to satisfy the  
15       obligations incurred by the department of labor and industrial  
16       relations for the division directly or by requesting the board of  
17       fund commissioners to transfer the required amount from the  
18       special employment security fund to the unemployment compensation  
19       administration fund. The board of fund commissioners shall upon  
20       receipt of a written request of the department of labor and  
21       industrial relations make any such transfer. No expenditures of  
22       this fund or transfer herein provided, except for moneys  
23       collected pursuant to section 288.128, shall be made unless and  
24       until the director of the department of labor and industrial  
25       relations finds that no other funds are available or can properly

1 be used to finance such expenditures, except that as hereinafter  
2 authorized expenditures from such fund may be made for the  
3 purpose of acquiring lands and buildings, or for the erection of  
4 buildings on lands so acquired, which are deemed necessary by the  
5 director of the department of labor and industrial relations for  
6 the proper administration of this law. The director of the  
7 department of labor and industrial relations shall order the  
8 transfer of such funds or the payment of any such obligation and  
9 such funds shall be paid by the state treasurer on requisitions  
10 drawn by the director of the department of labor and industrial  
11 relations directing the state auditor to issue his or her warrant  
12 therefor. Any such warrant shall be drawn by the state auditor  
13 based upon bills of particulars and vouchers certified by an  
14 officer or employee designated by the director of the department  
15 of labor and industrial relations. Such certification shall  
16 among other things include a duly certified copy of the director  
17 of the department of labor and industrial relations' findings  
18 hereinbefore referred to. The moneys in this fund, except for  
19 moneys collected pursuant to section 288.128, are hereby  
20 specifically made available to replace, within a reasonable time,  
21 any moneys received by this state pursuant to section 302 of the  
22 Federal Social Security Act (42 U.S.C.A. Sec. 502), as amended,  
23 which, because of any action or contingency, have been lost or  
24 have been expended for purposes other than, or in amounts in  
25 excess of, those necessary for the proper administration of the

1 employment security law. The moneys in this fund shall be  
2 continuously available to the director of the department of labor  
3 and industrial relations for expenditure in accordance with the  
4 provisions of this section and shall not lapse at any time or be  
5 transferred to any other fund except as herein provided.

6 2. The director of the department of labor and industrial  
7 relations, subject to the approval of the board of public  
8 buildings, is authorized and empowered to use all or any part of  
9 the funds in the special employment security fund, except for  
10 moneys collected pursuant to section 288.128, for the purpose of  
11 acquiring suitable office space for the division by way of  
12 purchase, lease, contract or in any other manner, including the  
13 right to use such funds or any part thereof to purchase land and  
14 erect thereon such buildings as he or she shall deem necessary or  
15 to assist in financing the construction of any building erected  
16 by the state of Missouri or any of its agencies wherein available  
17 space will be provided for the division under lease or contract  
18 between the department of labor and industrial relations and the  
19 state of Missouri or such other agency. The director of the  
20 department of labor and industrial relations may transfer from  
21 the unemployment compensation administration fund to the special  
22 employment security fund amounts not exceeding funds specifically  
23 available to the department of labor and industrial relations for  
24 that purpose, equivalent to the fair reasonable rental value of  
25 any land and buildings acquired for its use until such time as



1 the full amount of the purchase price of such land and buildings  
2 and such cost of repair and maintenance thereof as was expended  
3 from the special employment security fund has been returned to  
4 such fund.

5 3. The director of the department of labor and industrial  
6 relations may also transfer from the unemployment compensation  
7 administration fund to the special employment security fund  
8 amounts not exceeding funds specifically available to the  
9 department of labor and industrial relations for that purpose,  
10 equivalent to the fair reasonable rental value of space used by  
11 the department of labor and industrial relations in any building  
12 erected by the state of Missouri or any of its agencies until  
13 such time as the department of labor and industrial relations'  
14 proportionate amount of the purchase price of such building and  
15 the department of labor and industrial relations' proportionate  
16 amount of such costs of repair and maintenance thereof as was  
17 expended from the special employment security fund has been  
18 returned to such fund.

19 288.330. 1. Benefits shall be deemed to be due and payable  
20 only to the extent that moneys are available to the credit of the  
21 unemployment compensation fund and neither the state nor the  
22 division shall be liable for any amount in excess of such sums.  
23 [Neither the state of Missouri, nor any person or agency acting  
24 for it, may under any circumstance, by issuing bonds or otherwise  
25 borrow money from any source whatsoever to pay benefits

1 hereunder, except as provided in 42 U.S.C.A. Section 1321.] The  
2 governor is authorized to apply for an advance to the state  
3 unemployment fund and to accept the responsibility for the  
4 repayment of such advance [in accordance with the conditions  
5 specified in Title XII of the Social Security Act, as amended,]  
6 in order to secure to this state and its citizens the advantages  
7 available under the provisions of [such title] federal law.

8 2. (1) The purpose of this subsection is to provide a  
9 method of financing the replenishment of the state's unemployment  
10 compensation fund as an alternative to borrowing or obtaining  
11 advances from the federal unemployment trust fund or for  
12 refinancing those loans or advances, and to provide a method  
13 through which the state may continue its unemployment  
14 compensation program at the least possible cost to the state and  
15 its employers.

16 (2) For the purposes of this subsection, "credit  
17 instrument" means any type of borrowing obligation issued under  
18 this section, including any bonds, commercial line of credit  
19 note, tax anticipation note or similar instrument.

20 (3) The board of fund commissioners is authorized to issue,  
21 sell, and deliver and execute credit instruments which shall  
22 mature no later than five years after issuance in the name of the  
23 commission in an amount determined by the commission not to  
24 exceed a total of four hundred fifty million dollars of  
25 indebtedness that results in reducing or avoiding the need to

1 borrow or obtain an advance under 42 U.S.C. Section 1321, or any  
2 similar federal legislation, or in an amount necessary to  
3 refinance any borrowing or advance previously made by the state  
4 for those purposes. The commission shall make an affirmative  
5 finding that the issuance of credit instruments for the purposes  
6 established in this section results in a savings to the state and  
7 its employers.

8 (4) The commission shall provide for the payment of the  
9 principal of the credit instruments, any redemption premiums, the  
10 interest, and costs attributable to the credit instruments being  
11 issued or outstanding as provided in this subsection and in  
12 section 288.310. Unless the commission directs otherwise, the  
13 credit instruments shall be repaid in the same time frame and in  
14 the same amounts as would be required for loans issued pursuant  
15 to 42 U.S.C. Section 1321; however, in no case shall bond  
16 indebtedness continue beyond five consecutive years.

17 (5) The commission may irrevocably pledge money received  
18 from the contributions received under section 288.128 as revenue  
19 for the payment of credit instruments and deposited in an account  
20 created for such purpose in the special employment security fund  
21 or other money legally available to it.

22 (6) Credit instruments issued under this section shall not  
23 constitute debts of this state or of any agency, political  
24 corporation, or political subdivision of this state and are not a  
25 pledge of the faith and credit of this state or of any of those

1 governmental entities. Credit instruments are payable only from  
2 revenue provided for under this chapter. Credit instruments  
3 shall contain a statement to the effect that:

4 (a) Neither the state nor any agency, political  
5 corporation, or political subdivision of the state shall be  
6 obligated to pay the principal or interest on the credit  
7 instruments except as provided by this section; and

8 (b) Neither the full faith and credit nor the taxing power  
9 of the state nor any agency, political corporation, or political  
10 subdivision of the state is pledged to the payment of the  
11 principal, premium, if any, or interest on the credit instruments  
12 except as provided by this section.

13 (7) The owner of any credit instruments issued under this  
14 section shall at the time of purchase agree to waive any right of  
15 recovery and forever hold harmless the state and any agency,  
16 political corporation, or political subdivision thereof. The  
17 debt owner shall agree the sole source of revenue for repayment  
18 of such credit instruments shall be those revenues derived from  
19 contributions received under section 288.128.

20 (8) The state pledges and agrees with the owners of any  
21 credit instruments provided and issued under this section that  
22 the state will not limit or alter the rights vested in the  
23 commission to fulfill the terms of any agreements made with the  
24 owners or in any way impair the rights and remedies of the owners  
25 until the credit instruments are fully discharged except as

1 provided by this section.

2 (9) The commission may provide for the flow of funds and  
3 the establishment and maintenance of separate accounts within the  
4 special employment security fund, including the interest and  
5 sinking account, the reserve account, and other necessary  
6 accounts, and may make additional covenants with respect to the  
7 credit instruments in the documents, including the authorization  
8 of the issuance of credit instruments as well as refunding credit  
9 instruments, as applicable. The resolutions authorizing the  
10 credit instruments may also prohibit the further issuance of  
11 credit instruments or other obligations payable from appropriated  
12 moneys or may reserve the right to issue additional credit  
13 instruments to be payable from appropriated moneys on a parity  
14 with or subordinate to the lien and pledge in support of the  
15 credit instruments being issued and may contain other provisions  
16 and covenants as determined by the commission.

17 (10) The commission may issue credit instruments to refund  
18 all or any part of the outstanding borrowing issued under this  
19 section including matured but unpaid interest.

20 (11) The credit instruments issued by the commission, any  
21 transaction relating to the credit instruments, and profits made  
22 from the issuance of credit are free from taxation by the state  
23 or by any municipality, court, special district, or other  
24 political subdivision of the state.

25 (12) As determined necessary by the commission the proceeds

1 of the credit instruments less the cost of issuance shall be  
2 placed in the state's unemployment compensation fund and may be  
3 used for the purposes for which that fund may otherwise be used.  
4 If those net proceeds are not placed immediately in the  
5 unemployment compensation fund they shall be held in the special  
6 employment security fund in an account designated for that  
7 purpose until they are transferred to the unemployment  
8 compensation fund.

9 (13) The commission may enter into any contract or  
10 agreement, including fixed and/or variable rate options, as  
11 deemed necessary or desirable to effectuate cost effective  
12 financing hereunder. Such agreements may also include credit  
13 enhancement, credit support, or interest rate protection  
14 agreements. Any fees or costs associated with such agreements  
15 shall be deemed administrative expenses for the purposes of  
16 calculating assessments relating to payment of the principal,  
17 interest, and administrative expenses related to credit  
18 instruments pursuant to the provisions of section 288.128.

19 (14) To the extent this section conflicts with other laws  
20 the provisions of this section prevail. This section shall not  
21 be subject to the provisions of sections 23.250 to 23.298, RSMo.

22 (15) If the United States Secretary of Labor holds that a  
23 provision of this subsection does not conform with a federal  
24 statute or would result in the loss to the state of any federal  
25 funds otherwise available to it the commission may administer

1 this subsection to conform with the federal statute until the  
2 general assembly meets in its next regular session and has an  
3 opportunity to amend this subsection.

4 (16) (a) As used in this subdivision the term "lender"  
5 means any state or national bank.

6 (b) The commission is authorized to enter financial  
7 agreements with any lender that result in reducing or avoiding  
8 the need to borrow or obtain an advance under 42 U.S.C. Section  
9 1321, or any similar federal legislation. The total amount of  
10 the outstanding obligation under the agreement shall not exceed  
11 the difference of four hundred fifty million dollars and the debt  
12 indebtedness incurred under this subsection. In no instance  
13 shall such indebtedness under any financial agreement continue  
14 for more than five consecutive years. Repayment of obligations  
15 to lenders shall be made from the special employment security  
16 fund, section 288.310.

17 (17) The provisions of sections 23.250 to 23.298, RSMo,  
18 shall not apply to the provisions of subsection 2 of this  
19 section.

20 3. In event of the suspension of this law, any unobligated  
21 funds in the unemployment compensation fund, and returned by the  
22 United States Treasurer because such Federal Social Security Act  
23 is inoperative, shall be held in custody by the treasurer and  
24 under supervision of the division until the legislature shall  
25 provide for the disposition thereof. In event no disposition is

1 made by the legislature at the next regular meeting subsequent to  
2 suspension of said law, then all unobligated funds shall be  
3 returned ratably to those who contributed thereto.

4 288.380. 1. Any agreement by a worker to waive, release,  
5 or commute such worker's rights to benefits or any other rights  
6 pursuant to this chapter, or pursuant to an employment security  
7 law of any other state or of the federal government shall be  
8 void. Any agreement by a worker to pay all or any portion of any  
9 contributions required shall be void. No employer shall directly  
10 or indirectly make any deduction from wages to finance the  
11 employer's contributions required from him or her, or accept any  
12 waiver of any right pursuant to this chapter by any individual in  
13 his or her employ.

14 2. No employing unit or any agent of an employing unit or  
15 any other person shall make a false statement or representation  
16 knowing it to be false, nor shall knowingly fail to disclose a  
17 material fact to prevent or reduce the payment of benefits to any  
18 individual, nor to avoid becoming or remaining an employer, nor  
19 to avoid or reduce any contribution or other payment required  
20 from any employing unit, nor shall willfully fail or refuse to  
21 make any contributions or payments nor to furnish any required  
22 reports nor to produce or permit the inspection or copying of  
23 required records. Each such requirement shall apply regardless  
24 of whether it is a requirement of this chapter, of an employment  
25 security law of any other state or of the federal government.



1           3. No person shall make a false statement or representation  
2 knowing it to be false or knowingly fail to disclose a material  
3 fact, to obtain or increase any benefit or other payment  
4 pursuant to this chapter, or under an employment security law of  
5 any other state or of the federal government either for himself  
6 or herself or for any other person.

7           4. No person shall without just cause fail or refuse to  
8 attend and testify or to answer any lawful inquiry or to produce  
9 books, papers, correspondence, memoranda, and other records, if  
10 it is in such person's power so to do in obedience to a subpoena  
11 of the director, the commission, an appeals tribunal, or any duly  
12 authorized representative of any one of them.

13           5. No individual claiming benefits shall be charged fees of  
14 any kind in any proceeding pursuant to this chapter by the  
15 division, or by any court or any officer thereof. Any individual  
16 claiming benefits in any proceeding before the division or a  
17 court may be represented by counsel or other duly authorized  
18 agent; but no such counsel or agents shall either charge or  
19 receive for such services more than an amount approved by the  
20 division.

21           6. No employee of the division or any person who has  
22 obtained any list of applicants for work or of claimants for or  
23 recipients of benefits pursuant to this chapter shall use or  
24 permit the use of such lists for any political purpose.

25           7. Any person who shall willfully violate any provision of

1 this chapter, or of an employment security law of any other state  
2 or of the federal government or any rule or regulation, the  
3 observance of which is required under the terms of any one of  
4 such laws, shall upon conviction be deemed guilty of a  
5 misdemeanor and shall be punished by a fine of not less than  
6 fifty dollars nor more than one thousand dollars, or by  
7 imprisonment in the county jail for not more than six months, or  
8 by both such fine and imprisonment, and each such violation or  
9 each day such violation continues shall be deemed to be a  
10 separate offense.

11 8. In case of contumacy by, or refusal to obey a subpoena  
12 issued to, any person, any court of this state within the  
13 jurisdiction of which the inquiry is carried on, or within the  
14 jurisdiction of which the person guilty of contumacy or refusal  
15 to obey is found or resides or transacts business, upon  
16 application by the director, the commission, an appeals tribunal,  
17 or any duly authorized representative of any one of them shall  
18 have jurisdiction to issue to such person an order requiring such  
19 person to appear before the director, the commission, an appeals  
20 tribunal or any duly authorized representative of any one of  
21 them, there to produce evidence if so ordered or there to give  
22 testimony touching the matter under investigation or in question;  
23 and any failure to obey such order of the court may be punished  
24 by the court as a contempt thereof.

25 9. (1) Any individual who receives unemployment benefits

1 by intentionally misrepresenting, misstating, or failing to  
2 disclose any material fact has committed fraud. After the  
3 discovery of facts indicating fraud, a deputy shall make a  
4 written determination that the individual obtained unemployment  
5 benefits by fraud and that the individual must promptly repay the  
6 unemployment benefits to the fund. In addition, the deputy shall  
7 assess a penalty equal to double the amount fraudulently  
8 obtained. If division records indicate that the individual had a  
9 prior established overpayment due to fraud, the deputy shall, on  
10 the present overpayment, assess a penalty equal to double the  
11 amount fraudulently obtained.

12 (2) Unless the individual within thirty calendar days after  
13 notice of such determination of overpayment by fraud is either  
14 delivered in person or mailed to the last known address of such  
15 individual files an appeal from such determination, it shall be  
16 final. Proceedings on the appeal shall be conducted in  
17 accordance with section 288.190.

18 (3) If the individual fails to repay the unemployment  
19 benefits and penalty, assessed as a result of the deputy's  
20 determination that the individual obtained unemployment benefits  
21 by fraud, such sum shall be collectible in the manner provided in  
22 sections 288.160 and 288.170 for the collection of past due  
23 contributions. If the individual fails to repay the unemployment  
24 benefits that the individual obtained by fraud, the division may  
25 offset from any future unemployment benefits otherwise payable

1 the amount of the overpayment. Future benefits may not be used  
2 to offset the penalty due. Money received in repayment of  
3 fraudulently obtained unemployment benefits and penalties shall  
4 first be applied to the unemployment benefits overpaid, then to  
5 the penalty amount due. Payments made toward the penalty amount  
6 due shall be credited to the special employment security fund.

7 (4) If fraud or evasion on the part of any employer is  
8 discovered by the division, the employer will be subject to the  
9 fraud provisions of subsection 4 of section 288.160.

10 (5) The provisions of this subsection shall become  
11 effective July 1, 2005.

12 10. An individual who willfully fails to disclose amounts  
13 earned during any week with respect to which benefits are claimed  
14 by him or her, willfully fails to disclose or has falsified as to  
15 any fact which would have disqualified him or her or rendered him  
16 or her ineligible for benefits during such week, or willfully  
17 fails to disclose a material fact or makes a false statement or  
18 representation in order to obtain or increase any benefit  
19 pursuant to this chapter, shall forfeit all of his or her benefit  
20 rights, and all of his or her wage credits accrued prior to the  
21 date of such failure to disclose or falsification shall be  
22 canceled, and any benefits which might otherwise have become  
23 payable to him or her subsequent to such date based upon such  
24 wage credits shall be forfeited; except that, the division may,  
25 upon good cause shown, modify such reduction of benefits and

1       cancellation of wage credits. It shall be presumed that such  
2       failure or falsification was willful in any case in which an  
3       individual signs and certifies a claim for benefits and fails to  
4       disclose or falsifies as to any fact relative to such claim.

5       [10.] 11. (1) Any assignment, pledge, or encumbrance of  
6       any rights to benefits which are or may become due or payable  
7       pursuant to this chapter shall be void; and such rights to  
8       benefits shall be exempt from levy, execution, attachment, or any  
9       other remedy whatsoever provided for the collection of debt; and  
10      benefits received by any individual, so long as they are not  
11      mingled with other funds of the recipient, shall be exempt from  
12      any remedy whatsoever for the collection of all debts except  
13      debts incurred for necessities furnished to such individual or  
14      the individual's spouse or dependents during the time such  
15      individual was unemployed. Any waiver of any exemption provided  
16      for in this subsection shall be void; except that this section  
17      shall not apply to:

18      (a) Support obligations, as defined pursuant to paragraph  
19      (g) of subdivision (2) of this subsection, which are being  
20      enforced by a state or local support enforcement agency against  
21      any individual claiming unemployment compensation pursuant to  
22      this chapter; or

23      (b) Uncollected overissuances (as defined in section  
24      13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons;

25      (2) (a) An individual filing a new claim for unemployment

1 compensation shall, at the time of filing such claim, disclose  
2 whether or not the individual owes support obligations, as  
3 defined pursuant to paragraph (g) of this subdivision or owes  
4 uncollected overissuances of food stamp coupons (as defined in  
5 section 13(c)(1) of the Food Stamp Act of 1977). If any such  
6 individual discloses that he or she owes support obligations or  
7 uncollected overissuances of food stamp coupons, and is  
8 determined to be eligible for unemployment compensation, the  
9 division shall notify the state or local support enforcement  
10 agency enforcing the support obligation or the state food stamp  
11 agency to which the uncollected food stamp overissuance is owed  
12 that such individual has been determined to be eligible for  
13 unemployment compensation;

14 (b) The division shall deduct and withhold from any  
15 unemployment compensation payable to an individual who owes  
16 support obligations as defined pursuant to paragraph (g) of this  
17 subdivision or who owes uncollected food stamp overissuances:

18 a. The amount specified by the individual to the division  
19 to be deducted and withheld pursuant to this paragraph if neither  
20 subparagraph b. nor subparagraph c. of this paragraph is  
21 applicable; or

22 b. The amount, if any, determined pursuant to an agreement  
23 submitted to the division pursuant to Section 454(20)(B)(i) of  
24 the Social Security Act by the state or local support enforcement  
25 agency, unless subparagraph c. of this paragraph is applicable;

1 or the amount (if any) determined pursuant to an agreement  
2 submitted to the state food stamp agency pursuant to Section  
3 13(c)(3)(a) of the Food Stamp Act of 1977; or

4 c. Any amount otherwise required to be so deducted and  
5 withheld from such unemployment compensation pursuant to properly  
6 served legal process, as that term is defined in Section 459(i)  
7 of the Social Security Act; or any amount otherwise required to  
8 be deducted and withheld from the unemployment compensation  
9 pursuant to Section 13(c)(3)(b) of the Food Stamp Act of 1977;

10 (c) Any amount deducted and withheld pursuant to paragraph  
11 (b) of this subdivision shall be paid by the division to the  
12 appropriate state or local support enforcement agency or state  
13 food stamp agency;

14 (d) Any amount deducted and withheld pursuant to paragraph  
15 (b) of this subdivision shall, for all purposes, be treated as if  
16 it were paid to the individual as unemployment compensation and  
17 paid by such individual to the state or local support enforcement  
18 agency in satisfaction of the individual's support obligations or  
19 to the state food stamp agency to which the uncollected  
20 overissuance is owed as repayment of the individual's uncollected  
21 overissuance;

22 (e) For purposes of paragraphs (a), (b), (c), and (d) of  
23 this subdivision, the term "unemployment compensation" means any  
24 compensation payable pursuant to this chapter, including amounts  
25 payable by the division pursuant to an agreement pursuant to any

1 federal law providing for compensation, assistance, or allowances  
2 with respect to unemployment;

3 (f) Deductions will be made pursuant to this section only  
4 if appropriate arrangements have been made for reimbursement by  
5 the state or local support enforcement agency, or the state food  
6 stamp agency, for the administrative costs incurred by the  
7 division pursuant to this section which are attributable to  
8 support obligations being enforced by the state or local support  
9 enforcement agency or which are attributable to uncollected  
10 overissuances of food stamp coupons;

11 (g) The term "support obligations" is defined for purposes  
12 of this subsection as including only obligations which are being  
13 enforced pursuant to a plan described in Section 454 of the  
14 Social Security Act which has been approved by the Secretary of  
15 Health and Human Services pursuant to Part D of Title IV of the  
16 Social Security Act;

17 (h) The term "state or local support enforcement agency",  
18 as used in this subsection, means any agency of a state, or  
19 political subdivision thereof, operating pursuant to a plan  
20 described in paragraph (g) of this subdivision;

21 (i) The term "state food stamp agency" as used in this  
22 subsection, means any agency of a state, or political subdivision  
23 thereof, operating pursuant to a plan described in the Food Stamp  
24 Act of 1977;

25 (j) The director may prescribe the procedures to be



1 followed and the form and contents of any documents required in  
2 carrying out the provisions of this subsection;

3 (k) The division shall comply with the following priority  
4 when deducting and withholding amounts from any unemployment  
5 compensation payable to an individual:

6 a. Before withholding any amount for child support  
7 obligations or uncollected overissuances of food stamp coupons,  
8 the division shall first deduct and withhold from any  
9 unemployment compensation payable to an individual the amount, as  
10 determined by the division, owed pursuant to subsection 11 or 12  
11 of this section;

12 b. If, after deductions are made pursuant to subparagraph  
13 a. of paragraph (k) of this subdivision, an individual has  
14 remaining unemployment compensation amounts due and owing, and  
15 the individual owes support obligations or uncollected  
16 overissuances of food stamp coupons, the division shall first  
17 deduct and withhold any remaining unemployment compensation  
18 amounts for application to child support obligations owed by the  
19 individual;

20 c. If, after deductions are made pursuant to subparagraphs  
21 a. and b. of paragraph (k) of this subdivision, an individual has  
22 remaining unemployment compensation amounts due and owing, and  
23 the individual owes uncollected overissuances of food stamp  
24 coupons, the division shall deduct and withhold any remaining  
25 unemployment compensation amounts for application to uncollected

1 overissuances of food stamp coupons owed by the individual.

2 [11.] 12. Any person who, by reason of the nondisclosure or  
3 misrepresentation by such person or by another of a material  
4 fact, has received any sum as benefits pursuant to this chapter  
5 while any conditions for the receipt of benefits imposed by this  
6 chapter were not fulfilled in such person's case, or while he or  
7 she was disqualified from receiving benefits, shall, in the  
8 discretion of the division, either be liable to have such sums  
9 deducted from any future benefits payable to such person pursuant  
10 to this chapter or shall be liable to repay to the division for  
11 the unemployment compensation fund a sum equal to the amounts so  
12 received by him or her, and such sum shall be collectible in the  
13 manner provided in sections 288.160 and 288.170 for the  
14 collection of past due contributions.

15 [12.] 13. Any person who, by reason of any error or  
16 omission or because of a lack of knowledge of material fact on  
17 the part of the division, has received any sum of benefits  
18 pursuant to this chapter while any conditions for the receipt of  
19 benefits imposed by this chapter were not fulfilled in such  
20 person's case, or while such person was disqualified from  
21 receiving benefits, shall after an opportunity for a fair hearing  
22 pursuant to subsection 2 of section 288.190 have such sums  
23 deducted from any further benefits payable to such person  
24 pursuant to this chapter, provided that the division may elect  
25 not to process such possible overpayments where the amount of

1 same is not over twenty percent of the maximum state weekly  
2 benefit amount in effect at the time the error or omission was  
3 discovered. Recovering overpaid unemployment compensation  
4 benefits which are a result of error or omission on the part of  
5 the claimant shall be pursued by the division through billing and  
6 setoffs against state income tax refunds.

7 [13.] 14. Any person who has received any sum as benefits  
8 under the laws of another state, or under any unemployment  
9 benefit program of the United States administered by another  
10 state while any conditions for the receipt of benefits imposed by  
11 the law of such other state were not fulfilled in his or her  
12 case, shall after an opportunity for a fair hearing pursuant to  
13 subsection 2 of section 288.190 have such sums deducted from any  
14 further benefits payable to such person pursuant to this chapter,  
15 but only if there exists between this state and such other state  
16 a reciprocal agreement under which such entity agrees to recover  
17 benefit overpayments, in like fashion, on behalf of this state.

18 288.381. 1. The provisions of subsection 6 of section  
19 288.070 notwithstanding, benefits paid to a claimant pursuant to  
20 subsection 5 of section 288.070 to which the claimant was not  
21 entitled based on a subsequent determination, redetermination or  
22 decision which has become final, shall be collectible by the  
23 division as provided in subsections [11] 12 and [12] 13 of  
24 section 288.380.

25 2. Notwithstanding any other provision of law to the

1 contrary, when a claimant who has been separated from his  
2 employment receives benefits under this chapter and subsequently  
3 receives a back pay award pursuant to action by a governmental  
4 agency, court of competent jurisdiction or as a result of  
5 arbitration proceedings, for a period of time during which no  
6 services were performed, the division shall establish an  
7 overpayment equal to the lesser of the amount of the back pay  
8 award or the benefits paid to the claimant which were  
9 attributable to the period covered by the back pay award. After  
10 the claimant has been provided an opportunity for a fair hearing  
11 under the provision of section 288.190, the employer shall  
12 withhold from the employee's backpay award the amount of benefits  
13 so received and shall pay such amount to the division and  
14 separately designate such amount.

15 3. For the purposes of subsection 2 of this section, the  
16 division shall provide the employer with the amount of benefits  
17 paid to the claimant.

18 4. Any individual, company, association, corporation,  
19 partnership, bureau, agency or the agent or employee of the  
20 foregoing who interferes with, obstructs, or otherwise causes an  
21 employer to fail to comply with the provisions of subsection 2 of  
22 this section shall be liable for damages in the amount of three  
23 times the amount owed by the employer to the division. The  
24 division shall proceed to collect such damages under the  
25 provisions of sections 288.160 and 288.170.

1           288.382. The division may, for good cause, determine as  
2 uncollectible and purge from its records any benefit overpayment  
3 as mentioned in subsections [11] 12 and [12] 13 of section  
4 288.380 which remains unpaid after the expiration of five years  
5 after the date of the determination which established such  
6 overpayment.

7           288.395. Any person or entity perpetrating a fraud or  
8 misrepresentation under this chapter for which a penalty has not  
9 herein been specifically provided, shall be guilty of a class A  
10 misdemeanor and, in addition, shall be liable to this state for a  
11 civil penalty not to exceed double the value of the fraud. Any  
12 person or entity who has previously pled guilty to or has been  
13 found guilty of perpetrating a fraud or misrepresentation under  
14 this chapter and who subsequently violated any such provisions  
15 shall be guilty of a class D felony.

16           288.397. The division shall send on or before September 30,  
17 2004, to all employing units a report containing a summary of  
18 changes enacted in this act including but not limited to changes  
19 in the tax rate, contribution rate, taxable wage base, temporary  
20 solvency charges, benefit or eligibility charges, and other  
21 pertinent information to enable the employing units to comply  
22 with the changes made.

23           288.398. 1. The division of employment security may  
24 contract with one or more consumer reporting agencies to provide  
25 secure electronic access to information provided in the quarterly

1 wage report to the division of employment security by employing  
2 units. The consumer reporting agency shall be limited to use of  
3 such information to those permitted under Section 604 of the  
4 federal Fair Credit Reporting Act 15 U.S.C. 1681b).

5 2. The information provided to a consumer reporting agency  
6 shall be limited to the amount of wages reported by each  
7 employing unit, with the employing unit's name and address, for  
8 each of or up to the last eight quarters. For the purposes of  
9 this section, "consumer reporting agency" has the meaning  
10 assigned by Section 603(f) of the Fair Credit Reporting Act (15  
11 U.S.C. 1681f).

12 3. The information is subject to the privacy rules of this  
13 State and the federal Fair Credit Reporting Act in addition to  
14 this section. The consumer reporting agency shall require that  
15 any user of the information shall, prior to obtaining the wage  
16 report information, obtain a written consent from the individual  
17 to whom that wage report information pertains.

18 4. The written consent shall prominently contain language  
19 specifying the following:

20 (1) The consent to disclose is voluntary and refusal to  
21 consent to disclosure of state wage information shall not be the  
22 basis for the denial of credit;

23 (2) If consent is granted, the information shall be  
24 released to specified parties;

25 (3) Authorization by the individual is necessary for the

1 release of wage and employment history information;

2 (4) The specific application or transaction for the sole  
3 purpose of which release is made;

4 (5) Division of employment security files containing wage  
5 and employment history information submitted by employers may be  
6 accessed; and

7 (6) The identity and address of parties authorized to  
8 receive the released information.

9 5. The consumer reporting agency shall require that the  
10 information released shall be used only to verify the accuracy of  
11 the wage or employment information previously provided by an  
12 individual in connection with a specific transaction to satisfy  
13 its user's standard underwriting requirements or those imposed  
14 upon the user, and to satisfy user's obligations, under  
15 applicable state or federal fair credit reporting laws.

16 6. The division of employment security shall establish  
17 minimum audit, security, net worth, and liability insurance  
18 standards, technological requirements, any other terms and  
19 conditions deemed necessary in the discretion of the division to  
20 safeguard the confidentiality of the information and to otherwise  
21 serve the public interest. The division shall not pay any costs  
22 associated with the establishment or maintenance of the access  
23 provided for by this subsection, including but not limited to the  
24 costs of any audits of the consumer reporting agency or users by  
25 the division. The division may void any contract authorized by

1 this section if the contractor is not complying with this  
2 section. Except in cases of willful and wanton misconduct, the  
3 state and division is immune from any liability in connection  
4 with information provided under this section, including but not  
5 limited to liability with regard to the accuracy or use of the  
6 information. Any fees received by the division of employment  
7 security from a consumer reporting agency pursuant to this  
8 section shall be deposited in the Missouri unemployment insurance  
9 trust fund and dedicated solely for benefit payments.

10 7. Any person or entity who willfully fails to comply with  
11 any requirement imposed under this subsection with respect to any  
12 consumer is liable in Missouri state courts to that consumer to  
13 the same extent as provided for in Section 616 of the Federal  
14 Fair Credit Reporting Act (15 U.S.C. 1681n).

15 8. A consumer may bring an action in a circuit court to  
16 enjoin a violation of this act.

17 9. Any person who knowingly and willfully obtains  
18 information pursuant to this subsection from a consumer reporting  
19 agency under false pretenses shall be punished to the same extent  
20 as provided under Section 619 of the federal Fair Credit  
21 Reporting Act (15 U.S.C. 1681q).

22 10. If the completeness or accuracy of any item of  
23 information in a consumer's file at a consumer reporting agency  
24 obtained under this subsection is disputed, the dispute  
25 resolution shall be handled according to Section 611 of the



1     Federal Fair Credit Reporting Act (15 U.S.C. 1681l).

2             288.500. 1. There is created under this section a  
3 voluntary "Shared Work Unemployment Compensation Program". In  
4 connection therewith, the division may adopt rules and establish  
5 procedures, not inconsistent with this section, which are  
6 necessary to administer this program.

7             2. As used in this section, the following terms mean:

8             (1) "Affected unit", a specified department, shift, or  
9 other unit of three or more employees which is designated by an  
10 employer to participate in a shared work plan;

11            (2) "Division", the division of employment security;

12            (3) "Fringe benefit", health insurance, a retirement  
13 benefit received under a pension plan, a paid vacation day, a  
14 paid holiday, sick leave, and any other analogous employee  
15 benefit that is provided by an employer;

16            (4) "Normal weekly hours of work", as to any individual,  
17 the lesser of forty hours or the average obtained by dividing the  
18 total number of hours worked per week in the preceding  
19 twelve-week period by the number twelve;

20            (5) "Participating employee", an employee who works a  
21 reduced number of hours under a shared work plan;

22            (6) "Participating employer", an employer who has a shared  
23 work plan in effect;

24            (7) "Shared work benefit", an unemployment compensation  
25 benefit that is payable to an individual in an affected unit

1 because the individual works reduced hours under an approved  
2 shared work plan;

3 (8) "Shared work plan", a program for reducing unemployment  
4 under which employees who are members of an affected unit share  
5 the work remaining after a reduction in their normal weekly hours  
6 of work;

7 (9) "Shared work unemployment compensation program", a  
8 program designed to reduce unemployment and stabilize the work  
9 force by allowing certain employees to collect unemployment  
10 compensation benefits if the employees share the work remaining  
11 after a reduction in the total number of hours of work and a  
12 corresponding reduction in wages.

13 3. An employer who wishes to participate in the shared work  
14 unemployment compensation program established under this section  
15 shall submit a written shared work plan in a form acceptable to  
16 the division for approval. As a condition for approval by the  
17 division, a participating employer shall agree to furnish the  
18 division with reports relating to the operation of the shared  
19 work plan as requested by the division. The employer shall  
20 monitor and evaluate the operation of the established shared work  
21 plan as requested by the division and shall report the findings  
22 to the division.

23 4. The division may approve a shared work plan if:

24 (1) The employer has filed all reports required to be filed  
25 under this chapter for all past and current periods and has paid

1 all contributions due for all past and current periods;

2 (2) The shared work plan applies to and identifies a  
3 specified affected unit;

4 (3) The employees in the affected unit are identified by  
5 name and Social Security number;

6 (4) The shared work plan reduces the normal weekly hours of  
7 work for an employee in the affected unit by not less than twenty  
8 percent and not more than forty percent;

9 (5) The shared work plan applies to at least ten percent of  
10 the employees in the affected unit;

11 (6) The shared work plan describes the manner in which the  
12 participating employer treats the fringe benefits of each  
13 employee in the affected unit; and

14 (7) The employer certifies that the implementation of a  
15 shared work plan and the resulting reduction in work hours is in  
16 lieu of temporary layoffs that would affect at least ten percent  
17 of the employees in the affected unit and that would result in an  
18 equivalent reduction in work hours.

19 5. If any of the employees who participate in a shared work  
20 plan under this section are covered by a collective bargaining  
21 agreement, the shared work plan shall be approved in writing by  
22 the collective bargaining agent.

23 6. No shared work plan which will subsidize seasonal  
24 employers during the off-season or subsidize employers, at least  
25 fifty percent of the employees of which have normal weekly hours

1 of work equaling thirty-two hours or less, shall be approved by  
2 the division. No shared work plan benefits will be initiated for  
3 pay periods when the reduced hours reflect holiday earnings  
4 already committed to be paid by the employer.

5 7. The division shall approve or deny a shared work plan  
6 not later than the thirtieth day after the day on which the  
7 shared work plan is received by the division. The division shall  
8 approve or deny a plan in writing. If the division denies a  
9 plan, the division shall notify the employer of the reasons for  
10 the denial. Approval or denial of a plan by the division shall  
11 be final and such determination shall be subject to review in the  
12 manner otherwise provided by law. If approval of a plan is  
13 denied by the division, the employer may submit a new plan to the  
14 division for consideration no sooner than forty-five calendar  
15 days following the date on which the division disapproved the  
16 employer's previously submitted plan.

17 8. The division may revoke approval of a shared work plan  
18 and terminate the plan if it determines that the shared work plan  
19 is not being executed according to the terms and intent of the  
20 shared work unemployment compensation program, or if it is  
21 determined by the division that the approval of the shared work  
22 plan was based, in whole or in part, upon information contained  
23 in the plan which was either false or substantially misleading.

24 9. Each shared work plan approved by the division shall  
25 become effective on the first day of the week in which it is

1 approved by the division or on a later date as specified in the  
2 shared work plan. Each shared work plan approved by the division  
3 shall expire on the last day of the twelfth full calendar month  
4 after the effective date of such shared work plan.

5 10. An employer may modify a shared work plan created under  
6 this section to meet changed conditions if the modification  
7 conforms to the basic provisions of the shared work plan as  
8 originally approved by the division. The employer shall report  
9 the changes made to the plan in writing to the division at least  
10 seven days before implementing such changes. The division shall  
11 reevaluate the shared work plan and may approve the modified  
12 shared work plan if it meets the requirements for approval under  
13 subsection 4 of this section. The approval of a modified shared  
14 work plan shall not, under any circumstances, affect the  
15 expiration date originally set for the shared work plan. If  
16 modifications cause the shared work plan to fail to meet the  
17 requirements for approval, the division shall deny approval of  
18 the modifications as provided in subsection 7 of this section.

19 11. Notwithstanding any other provisions of this chapter,  
20 an individual is unemployed for the purposes of this section in  
21 any week in which the individual, as an employee in an affected  
22 unit, works less than his normal weekly hours of work in  
23 accordance with an approved shared work plan in effect for that  
24 week.

25 12. An individual who is otherwise entitled to receive

1 regular unemployment insurance benefits under this chapter shall  
2 be eligible to receive shared work benefits with respect to any  
3 week in which the division finds that:

4 (1) The individual is employed as a member of an affected  
5 unit subject to a shared work plan that was approved before the  
6 week in question and is in effect for that week;

7 (2) Notwithstanding the provisions of subdivision (2) of  
8 subsection 1 of section 288.040, the individual is able to work,  
9 available for work and works all available hours with the  
10 participating employer;

11 (3) The individual's normal weekly hours of work have been  
12 reduced by at least twenty percent but not more than forty  
13 percent, with a corresponding reduction in wages; and

14 (4) The individual has served a "waiting week" as defined  
15 in section 288.030.

16 13. A waiting week served under the provisions of  
17 subdivision (3) of subsection 1 of section 288.040 shall serve to  
18 meet the requirements of subdivision (4) of subsection 12 of this  
19 section and a waiting week served under the provisions of  
20 subdivision (4) of subsection 12 of this section shall serve to  
21 meet the requirements of section 288.040. [If the waiting week  
22 becomes payable, it shall be paid according to the law governing  
23 the program under which it was served.] Notwithstanding any  
24 other provisions of this chapter, an individual who files a new  
25 initial claim during the pendency of the twelve-month period in

1       which a shared work plan is in effect shall serve a waiting week  
2       whether or not the individual has served a waiting week under  
3       this subsection.

4           14.   The division shall not deny shared work benefits for  
5       any week to an otherwise eligible individual by reason of the  
6       application of any provision of this chapter that relates to  
7       availability for work, active search for work, or refusal to  
8       apply for or accept work with an employer other than the  
9       participating employer under the plan.

10          15.   The division shall pay an individual who is eligible  
11       for shared work benefits under this section a weekly shared work  
12       benefit amount equal to the individual's regular weekly benefit  
13       amount for a period of total unemployment less any deductible  
14       amounts under this chapter except wages received from any  
15       employer, multiplied by the full percentage of reduction in the  
16       individual's hours as set forth in the employer's shared work  
17       plan.  If the shared work benefit amount calculated under this  
18       subsection is not a multiple of one dollar, the division shall  
19       round the amount so calculated to the next lowest multiple of one  
20       dollar.  An individual shall be ineligible for shared work  
21       benefits for any week in which the individual performs paid work  
22       for the participating employer in excess of the reduced hours  
23       established under the shared work plan.

24          16.   An individual shall not be entitled to receive shared  
25       work benefits and regular unemployment compensation benefits in

1 an aggregate amount which exceeds the maximum total amount of  
2 benefits payable to that individual in a benefit year as provided  
3 under section 288.038. Notwithstanding any other provisions of  
4 this chapter, an individual shall not be eligible to receive  
5 shared work benefits for more than twenty-six calendar weeks  
6 during the twelve-month period of the shared work plan. No week  
7 shall be counted as a week of unemployment for the purposes of  
8 this subsection unless it occurs within the twelve-month period  
9 of the shared work plan.

10 17. Notwithstanding any other provision of this chapter,  
11 all benefits paid under a shared work plan, which are chargeable  
12 to the participating employer or any other base period employer  
13 of a participating employee shall be charged to the account of  
14 the participating employer under the plan.

15 18. An individual who has received all of the shared work  
16 benefits and regular unemployment compensation benefits available  
17 in a benefit year is an exhaustee under section 288.062 and is  
18 entitled to receive extended benefits under section 288.062 if  
19 the individual is otherwise eligible under that section.

20 288.501. 1. There is hereby created a "Missouri State  
21 Unemployment Council". The council shall consist of nine  
22 appointed voting members and two appointed nonvoting members.  
23 All appointees shall be persons whose training and experience  
24 qualify them to deal with the difficult problems of unemployment  
25 compensation, particularly legal, accounting, actuarial,



1 economic, and social aspects of unemployment compensation.

2 (1) Three voting members shall be appointed to the council  
3 by the governor. One voting member shall be appointed on account  
4 of his or her vocation, employment, or affiliations being classed  
5 as representative of employers. One voting member shall be  
6 appointed on account of his or her vocation, employment, or  
7 affiliations being classed as representative of employees. One  
8 voting member shall be appointed to represent the public interest  
9 separate from employee or employer representation.

10 (2) Three voting members and one nonvoting member shall be  
11 appointed to the council by the speaker of the house of  
12 representatives. One voting member shall be appointed on account  
13 of his or her vocation, employment, or affiliations being classed  
14 as representative of employers that employ twenty or less  
15 employees. One voting member shall be appointed on account of  
16 his or her vocation, employment, or affiliations being classed as  
17 representative of employees. One voting member shall be  
18 appointed to represent the public interest separate from employee  
19 or employer representation. One nonvoting member shall be  
20 appointed from the house of representatives.

21 (3) Three voting members and one nonvoting member shall be  
22 appointed to the council by the president pro tem of the senate.  
23 One voting member shall be appointed on account of his or her  
24 vocation, employment, or affiliations being classed as  
25 representative of employers. One voting member shall be

1 appointed on account of his or her vocation, employment, or  
2 affiliations being classed as representative of employees. One  
3 voting member shall be appointed to represent the public interest  
4 separate from employee or employer representation. One nonvoting  
5 member shall be appointed from the senate.

6 2. The council shall organize itself and select a  
7 chairperson or co-chairpersons and other officers from the nine  
8 voting members. Six voting members shall constitute a quorum and  
9 the council shall act only upon the affirmative vote of at least  
10 five of the voting members. The council shall meet no less than  
11 four times yearly. Members of the council shall serve without  
12 compensation, but are to be reimbursed the amount of actual  
13 expenses. Actual expenses shall be paid from the special  
14 employment security fund under section 288.310.

15 3. The division shall provide professional and clerical  
16 assistance as needed for regularly scheduled meetings.

17 4. Each nonvoting member shall serve for a term of four  
18 years or until he or she is no longer a member of the general  
19 assembly whichever occurs first. A nonvoting member's term shall  
20 be a maximum of four years. Each voting member shall serve for a  
21 term of three years. For the initial appointment, the governor-  
22 appointed employer representative, the speaker of the house-  
23 appointed employee representative, and the president pro tem of  
24 the senate-appointed public interest representative shall serve  
25 an initial term of one year. For the initial appointment, the

1 governor-appointed employee representative, the speaker of the  
2 house-appointed public interest representative, and the president  
3 pro tem of the senate-appointed employer representative shall  
4 serve an initial term of two years. At the end of a voting  
5 member's term he or she may be reappointed; however, he or she  
6 shall serve no more than two terms excluding the initial term for  
7 a maximum of eight years.

8 5. The council shall advise the division in carrying out  
9 the purposes of this chapter. The council shall submit annually  
10 by January fifteenth to the governor and the general assembly its  
11 recommendations regarding amendments of this chapter, the status  
12 of unemployment insurance, the projected maintenance of the  
13 solvency of unemployment insurance, and the adequacy of  
14 unemployment compensation.

15 6. The council shall present to the division every proposal  
16 of the council for changes in this chapter and shall seek the  
17 division's concurrence with the proposal. The division shall  
18 give careful consideration to every proposal submitted by the  
19 council for legislative or administrative action and shall review  
20 each legislative proposal for possible incorporation into  
21 department of labor and industrial relations recommendations.

22 7. The council shall have access to only the records of the  
23 division that are necessary for the administration of this  
24 chapter and to the reasonable services of the employees of the  
25 division. It may request the director or any of the employees

1 appointed by the director or any employee subject to this  
2 chapter, to appear before it and to testify relative to the  
3 functioning of this chapter and to other relevant matters. The  
4 council may conduct research of its own, make and publish  
5 reports, and recommend to the division needed changes in this  
6 chapter or in the rules of the division as it considers  
7 necessary.

8 8. The council, unless prohibited by a concurrent  
9 resolution of the general assembly, shall be authorized to  
10 commission an outside study of the solvency, adequacy, and  
11 staffing and operational efficiency of the Missouri unemployment  
12 system. The study shall be conducted every five years, the first  
13 being conducted in fiscal year 2005. The study shall be funded  
14 subject to appropriation from the special employment security  
15 fund under section 288.310.

16 288.502. If any provision of this act is found by a court  
17 of competent jurisdiction to be invalid or unconstitutional it is  
18 the stated intent of the legislature that the legislature would  
19 have approved the remaining portions of the act, and the  
20 remaining portions of the act shall remain in full force and  
21 effect.

22 Section B. Because immediate action is necessary to reduce  
23 or avoid the need to borrow or obtain advances under 42 U.S.C.,  
24 Section 1321, section A of this act is deemed necessary for the  
25 immediate preservation of the public health, welfare, peace, and

1       safety, and is hereby declared to be an emergency act within the  
2       meaning of the constitution, and section A of this act shall be  
3       in full force and effect upon its passage and approval.